S. HRG. 99-426

NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

DENNIS EUGENE WHITFIELD, OF VIRGINIA, TO BE UNDER SECRETARY OF LABOR, DENNIS MILES KASS, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF LABOR, JOYCE A. DOYLE, OF NEW YORK, AND FORD BARNEY FORD, OF VIRGINIA, TO BE MEMBERS OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION, DEPARTMENT OF LABOR

OCTOBER 16 AND 24, 1985

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NOMINATIONS

WEDNESDAY, OCTOBER 16, 1985

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m., in room SD-430, Dirksen Senate Office Building, Senator Don Nickles presiding.

Present: Senators Nickles and Grassley.

Senator NICKLES. Will the committee come to order?

Senator Grassley, I appreciate your appearance today. We are also pleased to have Senator Mattingly join us today.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. Mr. Chairman, due to commitments elsewhere, I will not be able to remain for the hearing on today's nominees. However, I would like to compliment you for giving members a chance to consider these nominations in an open hearing.

Although there is still, to the best of my knowledge, a logjam when it comes to getting nominees approved by the Senate, I still think that it is proper for this committee to move expeditiously to report Presidential nominations to the Senate.

I am looking forward to examining the record of this hearing, and I hope that speedy action can be taken with regard to these nominations.

Senator NICKLES. Senator Mattingly, do you have opening comments that you wish to make?

Senator MATTINGLY. Thank you, Mr. Chairman.

STATEMENT OF HON. MACK MATTINGLY, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MATTINGLY. Mr. Chairman, it is a pleasure and an honor to come before this committee today to introduce a fellow Georgian, Dennis Whitfield, who has been nominated to be Under Secretary of Labor.

I have had the privilege of knowing Dennis for many years and highly recommend him for this position. Dennis presently serves as the Chief of Staff to Bill Brock, the Secretary of Labor.

Dennis was born in Albany, GA, and is a 1971 graduate of the University of Georgia, and he has been very active in State Republican politics.

Prior to joining the Reagan administration as the Chief of Staff of the U.S. Trade Representative, Mr. Brock, Dennis was with the Republican National Committee. I am certain both of my contemporaries on the committee know him. He served as the regional political director for the Southeast, then as director of education and

training, and later as director of political affairs. During the 1980 Presidential campaign, Dennis served as the Republican committee director of "commitment 80", the Reagan/Bush Republican Ticket's National Volunteer Program. He was also Director of the RNC's 1979 and 1980 Voter Registration Program.

In 1976, Dennis served as special assistant to Secretary of Agriculture, Earl Butz. Mr. Chairman, my good friend from Iowa, I wholeheartedly recommend Dennis for this very important position. His competence, knowledge, and background complement his ability to get things done. I sincerely believe that he will serve our Nation well in this position as Under Secretary of Labor.

I would like to add that Dennis Whitfield, as I said before, is a graduate of the University of Georgia. And I realize that both of my fellow colleagues on the committee may have some reservations about that. And the one on my left, who is very seldom on my left, is probably thinking right now of becoming a braggart in reference to the University of Iowa. But I am certain that he will not say anything to you, Mr. Whitfield, and, of course, Senator Nickles, who takes whichever team is moving up in the ratings. Right now he is with Oklahoma.

But day in and day out, Dennis Whitfield will not only serve the people of our country well, but day in and day out, he is an advocate of the University of Georgia football team, which day in and day out is a winner.

Senator NICKLES. Did Georgia win last week?

Senator MATTINGLY. Did they play, sir? [Laughter.]

But in all seriousness, Dennis Whitfield and his wife will be a tremendous addition to this very honored position that he will hold at the Department of Labor. And I recommend him very highly.

Thank you.

Senator NICKLES. Senator Mattingly, we appreciate your comments and also your appearance before the committee today.

Dennis Whitfield, welcome to the committee. It is an honor to be nominated for the position of Under Secretary of Labor.

Do you have an opening statement?

Mr. WHITFIELD. Yes, Mr. Chairman, I do.

STATEMENT OF DENNIS E. WHITFIELD, UNDER SECRETARY OF LABOR-DESIGNATE FROM THE STATE OF GEORGIA

Mr. WHITFIELD. If I may, Senator Mattingly mentioned my wife and she is with me here today, Linda. And I would like to thank her for her support throughout the years that has been a real source of inspiration.

Mr. Chairman, it is a privilege for me to be here today and to appear before this committee. I am honored to have been nominated by President Reagan to serve as Under Secretary of Labor. If recommended by this committee and confirmed by the Senate, I will strive to serve my country, the President, and Secretary Brock, to the best of my ability and in a manner consistent with the high ideals of public service they have set.

I am deeply grateful for the opportunity to work with Secretary Brock as the Under Secretary of Labor. I have been associated with him since early 1977. During that time, I have come to admire him

for his abilities, and respect him as a leader in public life. But most importantly, for his willingness to serve in a position of public trust, for it is the well-being of all Americans, with which we, in public service, are entrusted—those of us who are elected to our positions and those of us who are appointed.

If confirmed by the Senate, it will be with this responsibility in mind that I will serve. Recognizing that there will be occasions for agreement and disagreement over issues of importance throughout the next several years, it is my commitment to you, to approach these times respectful of our political processes and institutions.

The Department of Labor is the fourth governmental department that I have had the opportunity to serve during my years of public service. The others are Agriculture, Energy, and the Office of the U.S. Trade Representative.

Each has offered unique opportunities and challenges and I look forward to the challenges that await us at the Department of Labor.

At this point in our economic development, we, in the United States, find some segments of our workforce facing severe adjustment problems. At the same time, we, in Government, are continually asked to do more with less resources. In my view, we will be faced with tight budget restraints for the foreseeable future. Therefore, we must work with you to develop new and creative ways of addressing these and other concerns.

Recognizing that there are numerous training and education programs funded in several agencies, and departments, Secretary Brock moved early to meet with the Secretaries of Education, and Health and Human Services to begin considering ways that we could cooperate and develop a common sense of purpose. We will continue, at the staff level and under the direction of our several Secretaries to explore ways to work together and manage the resources that we collectively have.

If we are to have a productive, energetic work force, it requires that labor and management talk. Secretary Brock and I are committed to promoting cooperation between labor and management whether that relates to quality of worklife programs or preserving the integrity of the collective bargaining process.

The Secretary and I have both spent a lot of time in our tenure at Labor, listening, learning, and seeking advice. We are trying to instill a sense of cooperation within our own Department. Our doors are open to business and labor. I personally have traveled to several of our regional offices, to meet with groups of representatives from business, labor, and our own Department employees. I hope to visit all of the regions by the end of the year.

These trips have given me a much greater appreciation of the problems and concerns of our American work force.

If we are to continue our commitment to programs that protect the safety and health of the American workers, protect the integrity of their pensions, and keep our work force able to compete through ongoing training, we must have a Department that is well managed.

Prior to our arrival, the GAO was in the process of conducting an audit of the Department's management. Some of our initial

findings and theirs ran parallel, and we welcome the opportunity to take a good, hard look at the management of the Department.

Secretary Brock set up a group of task forces to begin to address problems that were presented in a briefing by the GAO to the Secretary in June.

The groups looked at the areas of ERISA enforcement, the rulemaking process, information resource management, JTPA oversight, MSHA inspection levels, audits, work force efficiency, and most importantly, strengthened secretarial direction.

At the secretarial level, we are actively developing several management processes which will insure that the Secretary's long-term goals are implemented; help avoid crisis management through better controls and communication; and facilitate an effective policymaking process.

We intend to leave the Department of Labor a better, happier, more productive place. We have a talented and dedicated work force with which to assist us in this endeavor. I enjoy working with them and am confident that we can further enhance the delivery of services in the future.

Finally, our success will, in large measure, depend upon your involvement and support. I pledge to you full and open communication between my office and this committee and its staff. We seek your advice and counsel.

As Under Secretary, I will do my best to carry out Bill Brock's pledge to your committee, 5 months ago, that President Reagan's labor policies will be carried out in a fair and open manner that assures that the views of all parties are heard.

Mr. Chairman, I thank you for the opportunity to present this statement and I would be glad to answer any questions that you might have.

[The prepared statement and biographical sketch of Mr. Whitfield follow:]

STATEMENT

OF

DENNIS E. WHITFIELD

UNDER SECRETARY OF LABOR-DESIGNATE

BEFORE THE

SENATE LABOR AND HUMAN RESOURCES COMMITTEE

ON

OCTOBER 16, 1985

Mr. Chairman:

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If recommended by this Committee and confirmed by the Senate, I will strive to serve my country, the President, and Secretary Brock to the best of my ability and in a manner consistent with the high ideals of public service they have set.

I am deeply grateful for the opportunity to work with Secretary Brock as the Under Secretary of Labor. I have been associated with him since early 1977. During that time I have come to admire him for his abilities, and respect him as a leader in public life, but most importantly, for his willingness to serve in a position of public trust. For it is the well-being of all Americans with which we in public service are entrusted: those of us who are elected to our positions and those of us who are appointed.

If confirmed by the Senate, it will be with this responsibility in mind that I will serve, recognizing that there will be occasions for agreement and disagreement over issues of importance throughout the next several years. It is my commitment to you to approach these times respectful of our political processes and institutions.

The Department of Labor is the fourth governmental department I have had the opportunity to serve in during my

years of public service. The others were Agriculture, Energy, and the Office of the U.S. Trade Representative. Each has offered unique opportunities and challenges. I look forward to the challenges that await us at the Department of Labor.

At this point in our economic development, we find some segments of our workforce facing severe adjustment problems. At the same time, we in government are continually asked to do more with less resources. In my view, we will be faced with tight budget restraints for the foreseeable future. Therefore, we must work with you to develop new and creative ways of addressing these and other concerns.

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-- ensure that the Secretary's long term goals are implemented;

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We intend to leave the Department of Labor a better, happier, more productive place. We have a talented and dedicated workforce. I enjoy working with them and am confident we can further enhance the delivery of services.

Finally, our success will in large measure depend upon your involvement and support. I pledge to you full and open communication between my office and this Committee and its staff. We seek your advice and counsel.

As Under Secretary I will do my best to carry out Bill Brock's pledge to your Committee five months ago: that President Reagan's labor policies will be carried out in a fair and open manner that assures that the views of all parties are heard.

I will be happy to answer any questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Whitfield (LAST) Dennis (FIRST) Eugene (OTHER)

Position to which nominated: Under Secretary of Labor Date of nomination:

Date of birth: 9 (DAY) 7 (MONTH) 48 (YEAR) Place of birth: Albany, Georgia

Marital status: Married Full name of spouse: Linda Coulter Whitfield

Name and ages of children: No children

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of Georgia	1969-1972	ABJ	1972
Middle Georgia College	1967-1969	Assoc. Arts	1969
Rock Hill Academy	1964-1966	H.S.	1966

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Phi Theta Kappa Honorary Scholastic

Who's Who in American Junior Colleges

Southern Universities' Student Government Assoc. Representative

President, Chi Psi Fraternity, University of Georgia

Chi Psi Outstanding Alumni, University of Georgia

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Chief of Staff
U.S. Department of Labor, Wash., D.C. 4/29/85 to Present
Chief of Staff
Office of the U.S. Trade Representative, Wash., D.C. 5/81 to 4/29/85

Deputy Counselor to the Secretary of Energy, Wash., D.C. 1-29/81 to 5/15/81
Director
Political Affairs, Republican National Committee, Wash., D.C. 10/80-1/29/81

Director of Educational Training, RNC, Wash., D.C. 3/79 to 10/80

Regional Political Director, RNC, Wash., D.C. 4-77 to 3/79
Special Assistant to
Secretary of Agriculture, Wash., D.C. 1/19/76 to 2/1/77
Owner/Operator w/spouse
Old Clinton Bar-B-Que, Gray, Georgia 12/74 to 1/76

Political Consulting, Atlanta, Ga. Starkeville, Miss. 2/74 to 12/79

Real Estate: Bentley-Whitfield, Prop., Atlanta & Athens, Ga. 6/72-2/74

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

None.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Republican Party of Georgia

Mack Mattingly for Senate

Alexandria, Va. Republican Committee

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not applicable

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

None.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not applicable.

Senator NICKLES. Thank you, Mr. Whitfield.

I would like to thank you and the Secretary for the cooperation which you have already shown to me, to members of our staff, and to the committee in resolving a very difficult and complex issue, the *Garcia* decision. It looks like we should be able to resolve that, hopefully, this week. I commend you for your cooperation in that effort.

Mr. WHITFIELD. Mr. Chairman, I think that the thank yous go both ways in that regard. You were instrumental in helping resolve that as well as several other issues and the Secretary is deeply grateful.

Senator NICKLES. Senator Grassley, do you have any comments?

Senator GRASSLEY. No. I want to put a statement in the record.

Mr. Whitfield, before you leave, but privately, could I visit with you about another matter, unrelated to your nomination?

Mr. WHITFIELD. Yes, sir.

Senator GRASSLEY. Thank you very much.

Senator NICKLES. Mr. Kass has been nominated Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

Mr. Kass do you have a statement?

Mr. KASS. Yes, Mr. Chairman.

STATEMENT OF DENNIS M. KASS, ASSISTANT SECRETARY FOR PENSION AND WELFARE BENEFIT PROGRAMS-DESIGNATE

Mr. KASS. Mr. Chairman, it is a privilege for me to appear before the members of the committee and to have an opportunity to answer your questions. I also want to thank my wife, Barclay, who is here with our young son, Miles, today, one of our two, for joining me. Her support and understanding are, by far, my most valuable asset and I am grateful to be able to share with her the high distinction of this nomination.

By way of background, our family recently relocated to Washington from New York for the second time in 5 years. During our last stay, in 1981 and 1982, I served as Special Assistant to the President for Policy Development and Executive Secretary of the Cabinet Council on Commerce and Trade.

More recently, I have been a managing director of Equitable Investment Management Corp., an investment management affiliate of Equitable Life, with about $7.5 billion of pension assets under management.

Mr. Chairman, I am honored by the confidence shown in me by President Reagan and Secretary Brock through their actions to nominate me to be the first Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

The decision of Secretary Brock to elevate to the rank of Assistant Secretary the position for which I have been nominated, indicates the importance that he attaches to the Department of Labor's responsibility to administer title I of ERISA and to play an active part in the development of national retirement income policy.

The economic proportions and social impact of the Nation's private pension and welfare benefit system have grown enormously since the passage of ERISA in 1974. Today, private pension and welfare plan assets aggregate nearly $1 trillion and cover about 200

million participants in roughly 900,000 pension plans and 4.5 million welfare benefit plans.

Senator NICKLES. $1 trillion and how many plans?

Mr. KASS. Roughly $1 trillion. There is some double counting in the number of participants. Roughly 200 million participants.

Senator NICKLES. 200 what?

Mr. KASS. 200 million participants who are covered, in many instances, by a welfare plan and by a pension plan so that there is double counting. There are roughly 60 million participants in pension plans, covering about 60 percent of the Nation's work force.

ERISA has successfully secured the pension promise for the overwhelming majority of American workers while promoting the continued expansion of a totally voluntary pension system dependent upon private sponsorship and funding.

But Government faces new challenges in endeavoring to extend the gains already made under ERISA and these challenges can involve difficult policy choices which invite new legislative and regulatory initiatives.

Chief among the issues we face today are plan terminations and asset reversions, the definition of plan assets, possible additional regulation of welfare benefit plans, pension portability and integration, post-1965 accruals, multiemployer withdrawal liability—and this list is by no means exhaustive.

I am confident that we can address these issues imaginatively, purposefully and in a spirit of bipartisan cooperation. I am challenged and excited by the prospect of working with you, the other members of the committee, and staff to improve the private pension and welfare benefit system so that we can continue to achieve the objectives of ERISA.

I will be happy to answer any questions you may have. Thank you.

[The prepared statement of Mr. Kass, the biographical sketch, and responses to questions submitted by Senator Metzenbaum follow:]

STATEMENT

OF

DENNIS M. KASS

ASSISTANT SECRETARY FOR

PENSION AND WELFARE BENEFIT PROGRAMS-DESIGNATE

BEFORE THE

SENATE LABOR AND HUMAN RESOURCES COMMITTEE

ON

OCTOBER 16, 1985

Thank you, Mr. Chairman. It is a privilege for me to appear before the members of the Committee and to have an opportunity to answer your questions. I also want to thank my wife, Barclay, for joining me here today. Her support and understanding are by far my most valuable asset, and I am grateful to be able to share with her the high distinction of this nomination.

By way of background, our family recently relocated to Washington from New York -- for the second time in five years. During our last stay, in 1981 and 1982, I served as Special Assistant to the President for Policy Development and Executive Secretary of the Cabinet Council on Commerce and Trade. More recently, I have been a Managing Director of Equitable Investment Management Corporation, an investment management affiliate of Equitable Life with about $7B of pension assets under management.

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The economic proportions and social impact of the nation's

private pension and welfare benefit system have grown enormously since the passage of ERISA in 1974. Today, private pension and welfare benefit plan assets aggregate nearly $1 trillion and cover 200MM participants in 900,000 pension plans and 4.5MM welfare benefit plans. ERISA has successfully secured the pension promise for the overwhelming majority of American workers while promoting the continued expansion of a totally voluntary pension system dependent upon private sponsorship and funding. But government faces new challenges in endeavoring to extend the gains already made under ERISA, and these challenges can involve difficult policy choices which invite new legislative and regulatory initiatives. Chief among the issues we face today are plan terminations and asset reversions, the definition of plan assets, possible additional regulation of welfare benefit plans, pension portability and integration, post-65 accruals, multi-employer withdrawal liability, the role of pension assets in corporate takeovers, and leveraged ESOP's -- and this list is by no means exhaustive. I am confident that we can address these issues imaginatively, purposefully and in a spirit of bipartisan cooperation.

I am challenged and excited by the prospect of working with you and other members of the Committee, and with staff, to improve the private pension and welfare benefit system so that we can continue to achieve the objectives of ERISA.

I will be happy to answer any questions you may have.

QUESTIONS FROM SENATOR HOWARD M. METZENBAUM TO

DENNIS M. KASS

Question 1:

What problems do you believe now exist in the ability of the Department to properly enforce ERISA? Please explain what actions you believe are necessary to correct these shortcomings.

Answer 1:

The major challenge facing the Department in its efforts to properly enforce ERISA is to develop a strategic plan and program of priorities that will enable us to handle our great responsibilities with our limited resources. While I am still educating myself about possible approaches that could be taken in this area, I have concluded that a necessary pre-condition for any proper enforcement of ERISA is the ability of the Department, other ERISA agencies, fiduciaries and plan participants to have access to accurate, timely and complete information about plan operations and investments. The Department is being swamped by paper reports that are old by the time we get them. The Department is examining currently the cost effectiveness of various technical means to build an improved ERISA data base for policy analysis, research and enforcement, and to provide more useful information to the public. Among the options being studied are revision of the Form 5500, and

electronic filing or use of forms that more easily can be keypunched for machine handling.

Question 2:

What standards do you believe should be applied to exemption requests from the prohibited transaction rules, and do you believe that group exemptions should be permitted?

Answer 2:

I believe that, whenever practicable, class exemptions from ERISA should be issued, so that attractive investment opportunities are not lost and so that sound business practices are not disrupted. However, at the same time, I am committed to ensuring that the transactions with respect to which exemptions are granted meet the statutory requirements that any exemptions be in the sole interest of the plan and its participants and beneficiaries, and protective of their rights. While class exemptions that meet ERISA's fudiciary standards can and should be issued, I will not compromise ERISA's safeguards for participants by issuing class exemptions which fail to meet ERISA's standards.

Question 3:

What limitations should apply to an employer who wants to finance a leveraged buy-out with an ESOP? What protections should be afforded plan participants? Under what circumstances do you believe the Department should find such a transaction in violation of the exclusive benefit rule?

Answer 3:

While ESOPs may be viewed as a method of corporate financing by employers who seek to use them to finance a leveraged buy-out, it is important to remember that they are employee benefit plans under ERISA and the protections provided by ERISA to employee benefit plans apply also in the case of ESOPs. This means, among other things, that ESOPs cannot pay more than adequate consideration for any employer stock that they purchase and that the ESOP fiduciary must act solely in the interest of plan participants and beneficiaries. Therefore, when an ESOP purchases employer stock, the fiduciary must determine that the percentage of the stock in the employer which the ESOP receives for its investment is the proper percentage. Finally, it is important to remember that Congress, in passing the special exemption from the prohibited loan provisions for ESOPs, enjoined upon the Department the duty to subject transactions involved in leveraged ESOPs to "special scrutiny" to ensure that such transactions are exclusively for the benefit of plan participants and beneficiaries.

Question 4:

What benefits can a plan participant lose in the case of a spin-off termination or a termination/reestablishment? What do you believe should be done to protect participants?

Answer 4:

The joint inter-agency guidelines issued in May, 1984 serve to ensure that participants receive the full value for their accrued benefits in reversion cases. The guidelines also ensure that participants are not exposed to future investment risk since their benefits must be annuitized on termination. In addition, recognition of the spin-off/termination transaction generally ensures that participants in a spin-off plan will not lose any future benefits because the successor plan is identical to the prior plan. Consequently, full prior service credit, the same benefit accrual formula, and cost of living adjustments are preserved. However, the voluntary nature of the defined benefit plan system allows sponsors who engage in a termination/reestablishment transaction to alter certain benefit features in a new plan, including whether to offer full prior service credit, change benefit accrual formulas or offer COLA provisions prospectively. It appears that most sponsors who engage in termination/reestablishment transactions establish successor plans that are as generous or more than the terminated plan. The Department has announced recently its intention to conduct an extensive research project in order to ascertain the full impact of plan terminations on benefit security and retirement income policy in general.

Question 5:

When a plan provides that there can be no reversion, but the sponsor retains the right to amend the plan, (as in The Washington Star case) should ERISA require an employer to live up to the plan's promise not to permit a reversion? Would you support a change in the statute that clarifies that such amendments are not legal? If not, why not?

Answer 5:

The situation which occurred in The Washington Star case is a matter of concern to me. In my opinion, it is unfair for a plan to state that there can be no reversion of assets to an employer on termination of the plan and for the employer then to amend the plan at the last minute so as to recapture the reversion, even if the employer has the unilateral right to amend the plan. This matter is being examined in the Department's research project on plan terminations and plan asset reversions. The Department has made it clear that the summary plan description must provide information "concerning the circumstances which may result in the disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits included in the summary plan description."

Question 6:

What role should pension assets play in takeovers and acquisitions, including hostile takeover attempts? Do you

believe that these funds should be neutral in such activities? What changes in the statute do you believe are necessary to protect plan assets from being used to acquire other companies or to defend against a takeover attempt?

Answer 6:

Fiduciaries of pension plans have a duty, in takeovers and acquisitions, including hostile takeover attempts, to obey the basic principles of ERISA. Namely, their duty is to do what is in the best interest of plan participants and beneficiaries. Their responsibility is to plan participants and not to management. I understand that the Department has clearly stated its position in this area in the legal briefs that it has filed. I believe that evolving case law under ERISA will make it clear that the fiduciaries' sole duty is to the plan and not to anyone else.

Question 7:

How active do you believe plan trustees should be in corporate governance issues?

Answer 7:

Plan trustees, in voting shares of stock which the corporation owns, must be guided by the duty to do that which is in the best interest of the plan. Therefore, with respect to any issue that can have an economic impact on the value of the stock held by a plan, plan trustees have a duty to make an informed decision and to act on it.

Question 8:

Section 411 of ERISA prohibits those convicted of certain crimes from serving as "an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or as a consultant to any employee benefit plan." In light of the conviction of E.F. Hutton, what action should the Department of Labor take? As Assistant Secretary what action would you take to ensure that Section 411 was enforced against E.F. Hutton? What procedures now exist for determining whether there has been a violation of Section 411 or whether a "person" (as defined in ERISA) should be barred from dealing with plan assets?

Answer 8:

Under Section 411 of ERISA, when a natural person is convicted of certain crimes, he or she is prohibited from serving with respect to an employee benefit plan. However, when a corporation is convicted of those crimes, it may continue to serve with respect to an employee benefit plan unless a determination is made by the parole commission that such serving "would be inconsistent with the intention of this section." When the Department learns of the conviction of a corporation of certain crimes that would disable a natural person from serving an employee benefit plan, it initiates an inquiry to determine whether the corporation should be precluded from such service by the parole commission. I understand that the Department is currently conducting such an inquiry in the E.F. Hutton case.

Question 9:

If confirmed as Assistant Secretary, would you recuse yourself from discussions and decisions on issues impacting

Equitable Life? The life insurance industry? Dean Whitter Reynolds?

Answer 9:

I have severed completely my employment and financial relationship with Equitable Investment Management Corporation, an affiliate of the Equitable Life Assurance Society of the United States, and with Dean Whitter Reynolds, Inc. I have no continuing financial interest in either entity and I have no agreement or understanding, implicit or explicit, regarding the possibility of reemployment by either entity. With respect to the life insurance industry, my only continuing interest is ownership of several life insurance policies, and an exemption from the conflict of interest laws contained in Department of Labor regulations specifically excludes such interest from applicability of the law in determination of possible conflicts of interest.

I intend to abide by the conflict of interest laws and to avoid any conflict or appearance of conflict of interest, consistent with applicable regulation. To the extent that it is necessary for me to be recused from a particular activity, or to divest certain assets, in order to assure my compliance with the law, I will do as the spirit and letter of the law require.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Xass (LAST) Dennis (FIRST) Miles (OTHER)

Position to which nominated: Assistant Secretary of Labor for Pension and Welfare Benefit Programs

Date of nomination: September 9, 1985

Date of birth: 5 (DAY) 10 (MONTH) 50 (YEAR)

Place of birth: Englewood, New Jersey

Marital status: Married

Full name of spouse: Barclay Brown Xass

Name and ages of children: Hunter Lindsey Xass 3yrs., 3 mos.
Miles Glidden Xass 7 mos.

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Principia College	1968-1972	B.A.	1972
Massachusetts Insti-	1975-1977	S.M.	1977
tute of Technology			

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
The University Club of New York	none	1977 - present
The Metropolitan Club of Washington, D.C.	none	1984 - present
American Yacht Club, Rye, New York	none	1985 - present
Shenorock Shore Club, Rye, New York	none	1978 - 1984

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Managing Director; Equitable Investment Management Corp.; New York, NY; 5/83-7/85.

Vice President; Dean Witter Reynolds, Inc.; New York, NY; 5/82-5/83.

Special Assistant to the President for Policy Development; The White House; Wash., D.C.; 1/81-5/82.

Corporate lending and investment banking; Citibank, N.A.; New York, NY; 6/77-1/81

Management Intern; Citibank, N.A.; New York, N.Y.; 6/76-8/76.

Tour Guide; The First Church of Christ, Scientist, Boston, Mass.; 1/75-8/75.

Program Officer; National Institute of Education; Wash., D.C.; 6/73-11/74.

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Member, Investment Policy Advisory Committee, Office of the United States Trade Representative

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NONE

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Member, Republican Party

Director, Surrogate Speakers' Bureau, Reagan/Bush New York - 1984.

Contributions: 1984: Equitable Political Action Committee, $100; National Republican SenatorialCommittee, $65; National Republican Congressional Committee, $20. 1985: Republican National Committee, $60.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

CONNECTIONS HAVE BEEN SEVERED.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO SUCH PLANS.

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

4

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

NONE

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

NOT APPLICABLE

Senator NICKLES. Mr. Kass, I appreciate your enumeration of many of the big challenges that we have before us. As you know, we have been working on many of those in dealing with single-employer. I'm sure you are aware that we are also working on a multiemployer bill which we hope to introduce shortly.

We have a single-employer bill, as I know you are aware, working its way through on the floor of the Senate now in reconciliation. It has a premium increase. It also has reforms in it, as well.

I wonder if your shop is very aware of the Wheeling-Pittsburgh proposed termination. It is unfunded liability that would be putting about $425 million on the PBGC; also, the creation of a new plan to replace that.

I happen to have some concerns about that. Are you aware of that issue? Have you looked at what they are proposing as far as terminating their plan, dumping their liabilities, creating another plan?

Mr. KASS. Well, I am certainly familiar, from what I read, of their intentions. I am aware of a recent announcement that they will be dumping about $425 million of liabilities on the PBGC.

It is precisely because of concerns regarding the PBGC's technical insolvency, which will be further complicated by these additional liabilities, that the administration has so strongly supported the single-employer bill with both the increase in the premium proposed and the reforms that are intended to increase and enhance the financial stability of the PBGC in the future.

I am not intimately familiar with the proposed terms of the new Wheeling-Pittsburgh plan and I am not, therefore, in a position to comment on those provisions.

Senator NICKLES. I know you have not been confirmed yet, but would you ask the staff at the PBGC and others here to really look into this? If my memory serves me correct, the unfunded vested liability that's hanging before the PBGC right now is right at $600 million.

We are looking at one termination that is going to increase that to $1 billion. Also if I am correct, when the Labor Department was asking us to increase the premium to $7.50 or to $8, now $8.10, that was without any liability whatsoever, of a dollar of unfunded liability, coming from the Wheeling-Pittsburgh termination.

I am wondering in the back of my mind, if they are able to do this. Are the reforms that we have put in substantial enough to basically allow the PBGC to go against the future profits of a company? In my opinion, they may not be significant enough to stop this type of unloading.

My main concern is when I read, in the next paragraph, they are starting another plan. I understand it's another defined-benefit plan and I have a suspicion. I am a little concerned if it's going to be very close or identical to their previous plan.

I think the Labor Department and this committee need to work together to review this because I don't really want to see an unloading of $400 million of liability on the rest of all the defined-benefit plans in this country, and then see another defined-benefit plan created to supplant it or to replace it.

I have not visited with the individuals. I am going from rumors on the street and what we have read in the paper. But let me tell you that I am very, very concerned about it.

It is something that, I think, needs to be reviewed; needs to be considered and looked at closely. I hope that you will work with this committee to do that.

Mr. KASS. For the record, let me say that I share the depth of your concern: that the administration and the Secretary of Labor, in particular, are well aware of this problem and its magnitude, which is why the administration has been so emphatic in support of reforms as well as of the premium increase.

I will be happy to do my own part in working with the committee to see what we can do about it.

Senator NICKLES. To make a specific request, if that termination should go through, could you give me a revised estimate on what you think would be necessary to increase the premium to amortize the unfunded liability over a specific number of years?

Mr. KASS. Yes. I will work with the Executive Director of the PBGC to provide that information.

Senator NICKLES. I would like that today.

Mr. KASS. Yes, sir.

Senator NICKLES. I cannot help but think they can probably plug those figures in. Again, we have a bill on the floor.

I also tell you that this Senator is not going to be for increasing that premium. I have been working a lot on trying to get the reforms, but I still have some serious concerns when I see the unfunded vested liability going from $600 million to over $1 billion with one termination; and, especially, when I read in the next paragraph that they are coming up with another plan.

If it is a defined-contribution plan or something that would not have any future potential threat against PBGC, that maybe is another thing; but that is not, at least, what I have heard through the rumor mill.

Thank you very much. You have a real challenge to say the least. We also have in that legislation a requirement that calls for you to conduct a study dealing with reversions and give the committee some suggestions on that.

We look forward to working with you in that area as well.

Mr. KASS. Thank you, Senator.

Senator NICKLES. Mr. Ford, welcome again before this committee. I guess I have good news and bad news.

As you are probably aware, Senator Metzenbaum wished to be here today to ask a couple of questions. He is not able to be with us.

I think Senator Metzenbaum and Senator Hatch are trying to work up another date, in addition, to possibly have you again before the committee. It is my hope and desire that we will have all the nominees who are on the panel moved quickly through this committee and also through the Senate as soon as possible.

All of you have very big challenges before you. I hope we can get all of you confirmed in very short order.

Mr. Ford, you have been nominated to be Chairman of the Federal Mine Safety and Health Review Commission. You have been in the Labor Department for the last 4 years?

Mr. FORD. Yes, sir.

Senator NICKLES. I think you have done an outstanding job and we are pleased to have you again before this committee.

Mr. FORD. Thank you, Mr. Chairman

STATEMENT OF FORD B. FORD, MEMBER-DESIGNATE OF FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. FORD. Mr. Chairman and members of the committee, I have a very short statement.

Senator NICKLES. Good.

Mr. FORD. I am deeply honored to appear before this committee as President Reagan's designate to be a member of the Federal Mine Safety and Health Review Commission, and to be its Chairman on designation by the President.

It has been a distinct privilege for me to have appeared before this committee on two previous occasions: in October 1981 seeking your consent to the President's nomination for me to be Assistant Secretary of Labor for Mine Safety and Health, and on June 16, 1983, as his designate to be the Under Secretary of Labor.

Both of these positions have afforded me richly rewarding experiences in working with Congress, with working men and women, with industry, and with the dedicated employees of the U.S. Department of Labor. Should this committee and the full Senate affirm my nomination to the Federal Mine Safety and Health Review Commission, it will be a distinct honor and privilege for me to continue my Federal service in deliberations of that important body.

Improvement in factors influencing greater safety and health for our Nation's miners has been a continuing goal. We have all been encouraged by the trends in recent years, but rededication to that goal must be an ever-present commitment.

Miners and mine operators are working effectively with Government more than ever before to achieve maximum safety and health. Still much is to be done and the decisions of the Review Commission are integral to this effort.

It is my intention to join with my outstanding colleagues on the Commission in serving the purposes of the Mine Act and to hopefully made a credible contribution to the deliberations of that Commission.

Mr. Chairman, I thank you for the opportunity to appear before the committee and will be happy to answer any questions you may have.

[The biographical sketch of Mr. Ford follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: FORD (LAST) FORD (FIRST) BARNEY (OTHER)

Position to which nominated: CHAIRMAN, FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION Date of nomination:

Date of birth: 19 (DAY) NOV. (MONTH) 1922 (YEAR) Place of birth: NORTON, VIRGINIA

Marital status: MARRIED Full name of spouse: NORMA ISABEL LENTZ FORD

Name and ages of children: ROBERT B.B. FORD (39)
JACK T. FORD (DIED AT AG 33, 9/81)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
UNIVERSITY OF	CALIFORNIA AT BERKELEY	9/46-6/48	B.S.	6/48
ARMY SPECIALIZED TRAINING PROGRAM	PASADENA J.C.	9/43-2/44	CERT. OF COMPLETION CIVIL ENG I+II	2/44
VIRGINIA	MILITARY INSTITUTE	9/42-4/43		

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

STATE CADETSHIP (SCHOLARSHIP) VMI - DEAN'S LIST; EUROPEAN THEATRE OF OPERATIONS WWII RIBBONS - 1st LT. RIFLE PLATOON LEADER - COMBAT INFANTRYMAN BADGE; CALIF. REGISTERED ENGINEER (BOTH SAFETY + INDUSTRIAL) SAFETY MAN OF THE YEAR (1977) ~~BY~~ INSTITUTE OF MINE HEALTH AND SAFETY - COLORADO SCHOOL OF MINES; HONORARY AMIGO de SERSER JOBS FOR PROGRESS, INC.; CERTIFICATES OF APPRECIATION BOARD OF ~~DIRECTORS, WORLD CONFERENCE OF MAYORS~~; AND NATIONAL COUNCIL, HOLMES SAFETY ASSOCIATION.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
AMERICAN INSTITUTE OF INDUSTRIAL ENGINEERS	SECTY	1960's
FAIR OAKS, CA. ROTARY INTERNATIONAL	VICE-PRES.	1967
BISHOP, CA. V.F.W. POST 8988	POST COMMANDER	1948-50
CARMICHAEL, CA. FREE & ACCEPTED MASONS		
SACRAMENTO VALLEY SCOTTISH RITE MASON (32°)		
BEN ALI SHRINER		
SONS OF THE AMERICAN REVOLUTION		
CARMICHAEL, CA. B.P.O.E LODGE 2103		
B.A.V.		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

MANAGER, COCA-COLA BOTTLING CO OF BISHOP, CA. 1948-50

M.C.H. THEN CERTIFIED CONSTRUCTION INSPECTOR, CITY OF L.A. AT BLDG '50-51

ACTING POSTMASTER, BISHOP, CA '51-8/54

ASS'T TO POST OFFICE INSPECTOR, RIVERSIDE, CA. 8/54-3/55

SALES ENGINEER, DEARBORN STOVE CO, L.A. CA. 3/55-8/55

ASSOC. ADM. ANALYST CALIF. JT. LEGISLATIVE BUDGET COMM. SAC'TO 8/55-8/59

CHIEF CONSULTANT, CALIF. SENATE FACT FINDING COMMITTEE ON NATURAL RESOURCES, SACRAMENTO 8/59-2/67

ASS'T THEN DEPUTY SECRETARY FOR CALIF. RESOURCES AGENCY 2/67-10/73

CHAIRMAN AND PUBLIC MEMBER, CALIF. OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD-10/73-4/78

FORD B. FORD & ASSOCIATES (PRIVATE CONSULTING) 4/78-9/78

V.P., CALIF. INSTITUTE FOR INDUSTRIAL & GOV'T RELATIONS 8/78-8/81

CONTRACT SERVICES TO MINE SAFETY & HLTH. ADMIN. 8/81-10/81

ASS'T SECRETARY OF LABOR FOR MINE SAFETY & HEALTH-10/81-7/83

THE UNDER SECRETARY-U.S. DEPARTMENT OF LABOR-7/83-PRESENT

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

DURING CONSULTANT PERIOD - TO THE STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS.

Published ...ngs:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

NUMEROUS BOUND REPORTS FOR THE CALIFORNIA LEGISLATURE ON NATURAL RESOURCE SUBJECTS (1955-1961)

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

CONTRIBUTIONS TO REPUBLICAN CANDIDATES AND ORGANIZATIONS

FORD B. FOR.

Pge 3 - POLITICAL AFFILIATIONS & ACTIVITIES

SCHEDULE OF CONTRIBUTIONS:

1980.	REAGAN DELEGATION	$100.
	RONALD REAGAN FOR PRESIDENT	25.
	REAGAN FOR PRESIDENT COMMITTEE	25.
1981-	REPUBLICAN NATIONAL COMMITTEE	80.
	CALIFORNIANS FOR THE REPUBLIC	25.
1982-	DEUKMEJIAN CAMPAIGN COMMITTEE	100.
	REAGAN-BUSH MIDTERM REUNION	50.
	ATOKA COUNTRY SUPPER	60.
	REPUBLICAN WOMENS FORUM	45.
	PRINCE WILLIAM REPUBLICAN WOMEN	25.
1983-	REAGAN ANNIVERSARY BALL COMMITTEE	100.
	REPUBLICAN NATIONAL COMMITTEE	30.
	GOP VICTORY FUND	35.
	YOUNG AMERICANS FOR FREEDOM	25.
	CITIZENS FOR THE REPUBLIC	25.
	REPUBLICAN WOMENS FEDERAL FORUM	15.
	PRINCE WILLIAM REPUBLICAN WOMEN	19.
	REAGAN ALUMNI, POTOMAC CHAPTER	25.
	AMERICANS FOR THE REAGAN AGENDA	15.
1984-	REPUBLICAN NATIONAL COMMITTEE	90.
	RNC PRESIDENTIAL FUND	35.
	NAT'L FEDERATION OF REPUBLICAN WOMEN	25.
	REPUBLICAN WOMEN FEDERATION FORUM	15.
	PRINCE WILLIAM REPUBLICAN WOMEN	10.
	CONGRESSIONAL MAJORITY COMMITTEE	25.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NONE

3. Has a commitment been made to you for employment after you leave Federal service?

NO

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

YES

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

NONE

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A IN MY MIND; HOWEVER IF COMMITTEE FEELS THERE IS, I WILL RESOLVE TO COMMITTEE'S SATISFACTION.

Mr. GRASSLEY [presiding]. Mr. Ford, I don't have any questions. The chairman said he has to leave to introduce a appointee from the State of Oklahoma at another committee meeting. So he has asked me to continue the hearing.

As I indicated, I do not have any questions. So at this point we'll turn to you, Ms. Doyle, the President's nominee as a member of the Federal Mine Safety and Health Review Commission.

Welcome to the hearing. Congratulations upon your appointment. We would be happy to hear a statement from you.

Ms. DOYLE. Thank you, Mr. Chairman.

STATEMENT OF JOYCE DOYLE, NOMINEE FOR MEMBER OF FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Ms. DOYLE. I am deeply honored to have been nominated as a member of the Federal Mine Safety and Health Review Commission, and am pleased to appear before this distinguished committee.

I feel that I am qualified for the position for which I have been nominated by virtue of my many years of experience within the mining industry, during which time I have been involved with mine safety and health programs, as well as by my experience as a lawyer working with the Federal Mine Safety and Health Act of 1977 and its predecessor legislation.

While I expect that a significant effort will be involved in attaining that level of expertise possessed by those members of the Commission who have served for a period of time, I feel that I have the ability to do so and am willing to exert the time, effort, and resources required to achieve that goal.

Since my nomination, I have spoken with representatives of both labor and industry, and am aware of the health and safety issues that concern both. I also have a fairly solid grasp of the legislation that governs the matters that I will be called upon to review.

I look forward with enthusiasm to serving as a member of the Federal Mine Safety and Health Review Commission, and pledge to the committee that I will be fair and objective in all cases that come before the Commission.

I thank you for the opportunity to address this committee and I will be happy to answer any questions that the committee might have.

[The biographical sketch of Ms. Doyle follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: DOYLE (LAST) JOYCE (FIRST) A. (OTHER)

Position to which nominated: Member of Federal Mine Safety and Health Review Commission

Date of nomination: July 17, 1985

Date of birth: 13 (DAY) August (MONTH) 1937 (YEAR) Place of birth: Youngstown, Ohio

Marital status: Single Full name of spouse N/A

Full name and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Fordham University School of Law	1968-1972	J.D.	1972
Catholic University of America	1960-1961 1963-1964	M.S.W.	1964
Youngstown University	1955-1960	B.A.	1960

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Youngstown University - Partial scholarship, 1955

New York State DSW-Scholarship to Catholic University, 1963-64

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Bar Assoc.	None	1981 - Present
Fordham Law Alumni Assoc.	None	1974 - Present
Youngstown University Alumni Assoc.	None	1983 - Present
Y.M.C.A.	None	1981 - Present
Metropolitan Museum of Art	None	1983 - Present
Museum of Modern Art	None	1984 - Present

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Assistant General Counsel, Belco Petroleum Corporation, New York, N.Y. - May, 1976 - Present

Staff Attorney, Semel & Boeckmann (previously Fogarty, McLaughlin & Semel), New York, N.Y. - Sept., 1972 - April, 1976

Staff Attorney, New York State Attorney General's Office, New York, N.Y. - Aug., 1973 - Sept., 1973

Field Representative, Mobil Travel Guide, New York, N.Y. - May, 1973 - July, 1973 (Part Time - Temporary)

Chief Social Worker Pediatric Project, New York University Medical Center, New York, N.Y. - June, 1968 - January, 1973

Social Worker, New York State Dept. of Mental Hygiene, (Manhattan State Hospital), New York, N.Y. - Sept., 1966 - May, 1968

Social Worker, New York State Dept. of Social Welfare, Utica, N.Y. - July, 1964 - July, 1966

Caseworker, Catholic Service League, Youngstown, Ohio - June, 1961 - Aug., 1963

Government experience: List any advisory, consultative, honorary or other part time service or positions with Federal, State, or local governments other than those listed above.

None

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

tical ations activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Registration in Democratic party. No political activities or contributions during the last five years.

Future employment relationships

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, I will.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no such plans.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Based on contributions during my employment, I have vested benefits in pension, trusteed investment and deferred compensation plans of Belco Petroleum Corporation and/or its parent InterNorth, Inc., which, through a subsidiary, Northern Coal Company, engages, to a limited extent, in coal mining.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

I own 186 shares of 10.00 Preferred Stock (H) and 228 shares of 10.50 Convertible Preferred Stock (J) of InterNorth, Inc., whose subsidiary, Northern Coal Company, engages, to a limited extent, in coal mining.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

I have been employed since 1976 by Belco Petroleum Corporation, which, until 1983, engaged, through subsidiaries, in coal mining. In 1983, Belco became a subsidiary of InterNorth, Inc. whose subsidiary, Northern Coal Company, has a small coal operation.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I will recuse myself in the event that any cases concerning subsidiaries of InterNorth, Inc. come before the commission.

Mr. GRASSLEY. Thank you very much.

I want to make a closing statement that each of the nominees might expect questions from members who aren't here, which questions would be submitted in writing. If you receive them, we would ask that you almost immediately respond to those questions in writing.

Since there are no other members here and since I have no questions, I call this hearing adjourned until further notice.

[At 9:57 a.m., the hearing was adjourned until its next meeting on Oct. 24, 1985.]

NOMINATION

THURSDAY, OCTOBER 24, 1985

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m., in room SR-428A, Russell Senate Office Building, Senator Howard M. Metzenbaum presiding pro tempore.

Present: Senators Metzenbaum and Simon.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The committee will come to order.

Senator Hatch, the chairman, is going to try to be here with us, but he has a previous commitment that is providing a conflict at this time.

Congress made a commitment to mine safety and the health of miners in the landmark legislation of 1969. And then we passed strengthening amendments in 1977, known as the Mine Safety and Health Act.

At that time, Congress declared unequivocally that the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource, the miner.

To accomplish that primary goal, the act prescribes that mandatory health and safety standards must be developed and enforced, that mandatory inspections and investigations must be conducted, that mandatory citations must be issued, and penalties assessed for all violations of the act, and that these requirements have to be enforced through adjudicatory proceedings before the Mine Safety and Health Review Commission and Federal courts.

The success of the Mine Safety and Health Act in improving health and safety in America's mines has been clearly documented—not much argument about that. Rigorous enforcement of the act was the watchword of both Democratic and Republican administrations throughout the 1970's.

Unfortunately, this bipartisan commitment to enforce the act's requirements has not been maintained by the current administration.

We're here today to continue the consideration of the President's nomination of Ford B. Ford to serve as chairman of the Federal Mine Safety and Health Review Commission.

Mr. Ford has played a key role in this administration's policy on mine safety and health, and if confirmed he will be the point man in the review and adjudication of alleged violations of the act.

But it's important that we inquire into Mr. Ford's commitment to enforce the requirements of the law, because that's obviously a prerequisite for all Commission members. And in that regard, I have some questions for Mr. Ford.

But before getting into those questions, Mr. Ford, if you have any opening statement that you care to make, we would certainly be glad to hear from you.

STATEMENT OF FORD B. FORD, NOMINEE TO BE CHAIRMAN OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Mr. FORD. Thank you, Mr. Chairman.

In addition to the opening statement that I made at the hearing last week, I would like to, if I may, make a general statement, particularly on the issue that you raise on commitment.

I have always had a total commitment in any safety oriented position I've had to improve the health and safety of the circumstances under which I was working, beginning at the time when I was a construction inspector on a major water and power project, on tunnel driving, pin stock construction, and on powerhouse construction.

Carrying that forward, I became a registered safety engineer, registered in the State of California. And then as chairman of the California Occupational Safety and Health Appeals Board.

Carrying that forward into Assistant Secretary for Mine Safety and Health. Every action that I have taken or proposed—initiated—has been for the single purpose of improving health and safety for the Nation's miners.

I do take exception to the comment, Senator, that this administration has not subscribed to improvement of health and safety in the Nation's mines.

I would say that as a result of major changes that we have made in one respect, plus the now coordination between the mine workers and miners and the administration of the mines, along with the Government, we have the lowest incident rate in the history of mining.

It was not improving. It was kind of staying at the same level in 1979 and 1980, and into 1981, and since 1982 the incident rates have decreased steadily to the point where they are the lowest in the history of mining.

And I appreciate your giving me the opportunity to address that.

Senator METZENBAUM. Well, Mr. Ford, I'm happy to have you with us, I'm happy to have you make that statement, but I'm not so sure that the facts bear out your representations quite as well as you would suggest.

Even using Mine Safety and Health Adminstration's own data, the record of this administration is worse than the prior administration. In the sand and gravel mining industry, the fatality rate per 200,000 hours worked was cut by 50 percent from 1978 to 1981. It is unchanged from 1981 to 1984.

In the stone mining industry, the fatality rate was cut 42 percent from 1978 to 1981. It has gone up 25 percent from 1981 to 1984.

The story is the same with respect to nonfatal days lost per 200,000 employee hours. In the sand and gravel, stone and nonme-

tal mining industries, the Carter administration's improvements outstrip this administration.

In addition to the bare facts, one has to note that closing of smaller, more dangerous mines, and layoffs of less experienced miners by reason of the fact that there are less people being employed in the coal industry has lowered the injury rate despite the slackening in the MSHA enforcement.

There is a more important point, Mr. Ford, and that is—and this is the one where you fit in particularly—MSHA's data with respect to fatal and nonfatal injuries is not accurate by reason of your policies, because the failure to report is a nonsignificant/substantial injury with a $20 penalty, you have given operators an incentive not to report injuries. And you have destroyed the integrity of the reporting system.

No one knows the extent of the injuries that have gone undocumented by this administration. Let me give you one example.

I have in my hand here a letter from Joe Main, administrator, Department of Occupational Health and Safety of the United Mine Workers, dated January 29, 1985, addressed to David Zegeer, Assistant Secretary, Department of Labor.

DEAR MR. ZEGEER. I received the attached copies of violations issued by MSHA to the North American Coal Company's Quarto No. 4 Mine through our field representatives.

The violations were issued on November 28th, 1984, following a request for a UMW requested audit of the company's accident reporting on October 2nd, 1984.

Although I have not received a report from your office on this matter, I would appreciate it if when you do respond that you advise me as to why MSHA issued only three (3) non-S. & S. $20.00 violations for the company's failure to report over 400 lost-time accidents. That mere penalty action for these violations is beyond belief.

As previously stated, we believe the National accident rates are distorted. As the Quarto No. 4 audit alone shows, there is massive under-reporting of accidents and injuries in the coal industry. The lack of an effective monitoring by your Agency, coupled with the penalty assessed once these violations are found, are two likely reasons for the problem.

I would also appreciate an update on the additional mines I requested an audit on.

Sincerely yours,

Mr. Joe Main.

And then attached to that is a group of 10 pages of statistics which are Mine Safety and Health Administration, and there you find during the year of 1984 the following mine employees had injuries which resulted in reportable occupational injury with days away from work, and these occupational injuries were not reported to MSHA using 7000-1 forms.

And that is signed by Frankin Homko, who I gather is one of your inspectors—do you recognize the name?

Mr. FORD. No, sir, I do not.

Senator METZENBAUM. And then he repeats, "1., employee, Amos, injury date, April 17, 1984; 2., Amos, 2-24-84; 3., Anderson, 3-13-84——" and it just goes on with 400 cases.

And out of all of that, according to this report, there were only three $20 violations which you and I would have to agree are totally insignificant to start off with.

And I would like to put their letter in the record at this point, along with their previous letter; that is, the October 2, 1984 letter with attachments, and the January 29, 1985 letter with attachments.

[The material referred to follows:]

United Mine Workers of America

TELEPHONE
AREA CODE (202) 842-7200

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N.W.
Washington, D.C.
20005

October 2, 1984

David Zegeer, Assistant Secretary
Mine Safety and Health
Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203

Dear Mr. Zegeer:

In reviewing your administration's figures on accidents and injuries, we have found that serious discrepancies are arising at coal mines.

We noted your administration has cited Ohio as an area of the country where the accident rates had been reduced the most. We decided to take a look at the Ohio figures and target the largest underground coal mine in that state, the North American Coal Corporation's Quarto No. 4 Mine.

The results were astonishing. According to MSHA records, there were 16 lost time non-fatal accidents reported at the Quarto No. 4 Mine the last quarter of 1983. However, other records obtained show that there were actually 199 accidents with 66 of those being lost time accidents. The first quarter of 1984 followed that same pattern. MSHA records show 11 lost time non-fatal accidents reported by the company for the first quarter of 1984. However, other records show a total of 222 accidents at the mine with 78 of those listed as lost time accidents. MSHA's quarterly report contained 1,732 lost time non-fatal accidents for the first quarter of 1984. The unreported accidents at the Quarto No. 4 Mine alone represents a large increase in the total figure.

I am requesting an audit of the North American Coal Corporation's Quarto No. 4 Mine's accidents for the years of 1982, 1983 and 1984. I am requesting from you a report on your findings which includes a list of accidents that

were required to be reported but were not, and exactly how that occurred. I have attached a list of accidents we have obtained which will make your investigation easier.

I understand that there is no continued review of the accidents reporting of each mine to assure compliance by your agency, but even if violations are found regarding failure to report, they are cited as a non-S.&S. violation with a mere $20 penalty. It appears that compliance of the reporting requirements is monitored by the company in the spirit of cooperation. Please advise me of how well North American cooperated on this matter.

I am also requesting that your agency conduct an audit of the North American Coal Corporation's No. 6 and 7 Mines, along with the Saganaw Mine. All three are located in MSHA District 8. Additionally, I am requesting an audit on the Old Ben Coal Company's Kitt No. 1 Mine located in MSHA District 3. These audits would cover the years 1982, 1983 and 1984.

In addition to the audit addressing accidents that have occurred that were required to be reported and were not, I am also requesting that you determine the number of accidents that were reported in 1982 that would be considered over-reported. There is speculation that accidents in this category are still occurring, but are not being reported and thus influencing the incident rates.

Please advise me of your findings at each of the mines and the specific enforcement actions taken on <u>each</u> accident that the operator failed to report.

Sincerely yours,

Joe Main, Administrator
Department of Occupational
Health and Safety

/dm

Attachment

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of Issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 11/02/84 (Mo. Da. Yr.)
3. Time (24 hr. clock): 0810
4. Citation/Order Number: 2328837
5. Served To: T. Braga
6. Operator: Quarto Mining Company
7. Mine: Powhatan No. 4
8. Mine ID: 33-01157 (Contractor)
8. Type of Action: 104-a-
10. Violation: A. Health and Safety [ ] B. Section of Act [ ] C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice

During the year of 1982, the following mine employees had injuries which resulted in a reportable occupational injury with days away from work and these occupational injuries were not reported to MSHA using 7000-1 forms:

Employees	Injury Date		
1. Amos	3-8-82	16. Colvin	5-2-82
2. Anderson	10-21-82	17. Crowe	12-7-82
3. Ashcraft	8-12-82	18. Crow	12-16-82
4. Ashcraft	9-7-82	19. Dimella, M.	9-7-82
5. Ashcraft	10-6-82	20. Dotson	1-7-82
6. Beale	9-21-82	21. Dumbler	9-16-82
7. Bess	12-13-82	22 Earley	1-6-82
8. Billiter	12-29-82	23. Esker	9-28-82
9. Bingman	11-20-82	24. Eddy	2-16-82
10. Bobell, R.	10-14-82	25. Emalue	12 19-82
11. Bobell, R.	2-3-82	26. Emery	9-10-82
12. Bosley	11-4-82	27. Estep	9-9-82
13. Brandon	9-15-82	28 Ferguson	12-13-82
14. Brogan	12-13-82	29. Flor	12-29-82
15. Cattarelli	10-17-82	30. Flor	11-24-82

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated: (Mo. Da. Yr.)
17. Termination Due: A. Date: 11/16/84 (Mo. Da. Yr.) B. Time (24 hr. clock): 0830 C. Signature: Franklin Hooker D. AR Number: 21525 [X] See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date: (Mo. Da. Yr.) B. Time (24 hr. clock): C. Signature: D. AR Number:

Section III—Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]

21. Gravity

A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]

C. Number of persons who would be affected if the event occurred or were to occur: 000

22. Good Faith

A. Failure to abate within the time period given [ ]
B. Signature: Franklin Hooker
C. AR Number: 21525

Section IV—Automated System Data

23. Type of Inspection (activity code): CEF
24. Event Number: 5239271
25. Primary or Mill:

MSHA Form 7000-3, Apr 82, (revised)

Mine Citation/Order Continuation — Mine Safety and Health Administration

1. Dated (original issue): 11/02/84 — 2. Citation/Order Number: 2328373-

3. Subsequent Action ☐ Continuation ☒ — 4. Date: 11/02/84 — 5. Time (24 hr. clock): 0810 — 6. Served To: T. Brega

7. Operator: Quarto Mining Company — Mine: Pinkerton No. 4 — 8. Mine ID: 33-01157- — (Conference)

Justification For Action

31.	Fox	10-10-83	51. Kastrava	10-14-83
32.	Friend	11-9-83	52. Kingora	2-26-83
33.	Fullerton	12-29-83	53. Mahony	10-24-83
34.	Fullerton	8-12-83	54. Marling	11-22-83
35	Griffin	10-21-83	55. Marling	9-22-83
36.	Griffith	1-24-83	56. Merritt	10-26-83
37.	Halmicht	11-22-83	57. Monta	8-3-83
38.	Harman	10-26-83	59. Nardo	8-1-83
39.	Harman	10-19-83	59. Norris	10-9-83
40.	Harman	9-20-83	60. Pergamonlis	9-15-83
41.	Harlan	11-16-83	61. Price	12-29-83
42.	Harlan	11-10-83	62. Read	12-23-83
43.	Harlan	11-24-83	63. Allan	10-13-83
44.	Hailan	11-22-83	64. Roberts	12-13-83
45.	Hansel	12-7-83	65. Rogers	8-2-83
46.	Hamilton	7-31-83	66. Ruggiero	10-19-83
47.	Hess	11-5-83	67. Ruggiero	9-27-83
48.	Hora	9-13-83	68. Sabo	9-10-83
49.	Hughes	8-9-83	69. Schmidlin	11-9-83
50.	Hulley	9-16-83	70. Schmidt	12-21-83

9. Extended To: ☐ 9a. Date — 9b. Time (24 hr. clock) — 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ — 12. Type of Inspection: C F F — 13. Event Number: 5 2 3 9 2 7 1

14. Signature: Franklin Hawker — AR Number: 2 1 5 2 5

MSHA Form 7000-3a, Apr 82 (revised)

Mine Citation/Order Continuation

Mine Safety and Health Administration

1. Dated (original issue) 11 02 84 Mo. Da. Yr. 2. Citation/Order Number 2328837-

3. Subsequent Action ☐ Continuation ☒ 4. Date 11 02 84 Mo. Da. Yr. 5. Time(24 hr. clock) 0810 6. Served To T. Braga

7. Operator Quarto Mining Company Mine Powhatan No. 4 8. Mine ID 33-01157- (Contractor)

Justification For Action

I

71. Schmidt	9-15-82	91. Funkhouser	5-22-82
72. Sneddon	10-12-82	92. Hannan	9-23-82
73. Spence	11-19-82	93. Wieland	3-12-82
74. Starkey	11-29-82	94. Marling	3-17-82
75. Stewart	11-17-82	95. Sales	7-25-82
76. Stiles	7-26-82	96. Hartley	9-11-82
77. Stonebraker	6-13-82	97. Adams	6-4-82
78. Taylor	3-8-82	98. Allen	10-13-82
79. Tippins	8-6-82	99. Hart	3-15-82
80. Trigg	2-11-82	100. Taylor	3-8-82
81. Tmax	10-26-82	101. Barnes	3-30-82
82. Ware	9-2-82	102. Hess	4-5-82
83. Weed	10-19-82	103. Manson	4-17-82
84. Willbate	11-10-82	104. Harman	4-26-82
85. Wiseman	9-7-82	105. Kastavin	5-29-82
86. Wiseman	4-16-82	106. Wiseman	6-22-82
87. Yahn	12-13-82	107. Merritt	6-24-82
88. Yankee	10-21-82	108. Marling	4-9-82
89. Combs	10-19-82	109. Fullerton	7-27-82
90. Edgington	7-11-82	Hart thru Fullerton (#99)	
Person in charge was		did not have return to work	
T. Braga, Safety Analyst		dates.	

9. Extended To: ☐ 9a. Date Mo. Da. Yr. 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection C S F 13. Event Number 5 2 3 9 2 7 1

14. Signature Franklin Hanlon A/R Number 2 1 5 2 5

MSHA Form 7000-3a. Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐ | 2. Date: 1/1/84 | 3. Time (24 hr. clock): 0811 | 4. Citation/Order Number: 2328836

5. Served To: Thomas Biega | 6. Operator: Quarto Mining Company

7. Mine: Pennsylvania No. 4 | 8. Mine ID: 33-01157 (Contractor)

9. Type of Action: 104-a

10. Violation: A. Health ☐ Safety ☐ Other ☒ | B. Section of Act | C. Part/Section of Title 30 CFR: 50.20-a

11a. Significant and Substantial (see reverse) ☐ | 11b. Written Notice ☐

12. Condition or Practice

During the years 1983, January thru December, the following coal mine employee had injuries, which resulted in a reported occupational injury with days away from work and this occupational injuries were not reported to MSHA using 7000-1 forms.

Employee	Injury Date	Employee	Injury Date	Employee	Injury Date
1. Dinello	6-11-83	8. Anderson	3-24-83	15. Barnes	10-17-83
2. Allen Sweath	7-20-83	9. Anderson	1-8-83	16. Basil	10-16-83
3. Alltop	12-7-83	10. Antal	2-7-83	17. Blakely	2-16-83
4. Amos	4-20-83	11. Ayers	8-1-83	18. Bliss	11-28-83
5. Anderson	3-2-83	12. Baker	12-22-83	19. Bobell	2-14-83
6. Anderson	7-26-83	13. Baker	7-25-83	20. Bobell	7-21-83
7. Anderson	2-21-83	14. Baldwin	11-18-83	21. Brooks	12-5-83

13. Area Assessment

Thomas Biega, Safety Analyst, was the person in charge.

14. Initial Action: Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐ | 15. Citation/Order Number | 16. Dated: Mo. Da. Yr.

17. Termination Due: A. Date: 1/16/84 | B. Time (24 hr. clock): 0830 | C. Signature: Leslie R Ohler | D. AR Number: 215622 | E. See continuation form (MSHA Form 7000-3a) ☐

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date: Mo. Da. Yr. | B. Time (24 hr. clock) | C. Signature | D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

21. Gravity

A. The occurrence of the event against which the cited standard is directed was: No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays ☒ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐

C. Number of persons who would be affected if the event occurred or were to occur: 0

22. Good Faith

A. Failure to abate within the time period given ☐ | B. Signature: Leslie R Ohler | C. AR Number: 215622

Section IV—Automated System Data

23. Type of Inspection (activity code): CEF | 24. Event Number: 5239271 | 25. Primary or Mill

MSHA Form 7000-3 Rev 82 (revised)

Mine Citation/Order/
Continuation

Mine Safety and Health Administration

1. Dated (original issue) 11 02 84 2. Citation/Order Number 2328836-

3. Subsequent Action ☐ Continuation ☒ 4. Date 11 02 84 5. Time(24 hr. clock) 0850 6. Served To Thomas Biega

7. Operator Peabody Coal Company Mine Powhatan No. 4 8. Mine ID 33-01157- (Corrector)

Justification For Action

22. Booth	12-22-83	45. Billiter	3-22-83	68. Davis	5-4-83
23. Booth	11-10-83	46. Biegan	9-19-83	69. Delaney	3-5-83
24. Boothe	5-8-83	47. Biegan	2-9-83	70. Delong	7-25-83
25. Bosley	5-12-83	48. Blakely	8-29-83	71. Dempewolf	7-25-83
26. Bowers	9-19-83	49. Bumgardner	11-10-83	72. Dennis	6-8-83
27. Brawder	4-7-83	50. Bumgardner	8-19-83	73. Dennis	12-8-83
28. Beardwater	10-11-83	51. Bumgardner	5-27-83	74. Dennison	11-7-8
29. Brown	9-9-83	52. Burda	11-16-83	75. Dillon	8-7-83
30. Brown	4-18-83	53. Burda	10-27-83	76. Dobbs	11-9-8
31. Buchner	1-25-83	54. Burda	4-18-83	77. Dotson	11-3-8
32. Buska	3-10-83	55. Cain	3-5-83	78. Duke	1-4-8
33. Bumgardner	12-1-83	56. Carpenter	10-18-83	79. Dye	3-7-8
34. Bates	8-1-83	57. Carter	3-10-83	80. Easley	11-9-8
35. Bates	8-16-83	58. Cattlet	10-4-83	81. Easley	7-18-8
36. Bell	12-12-83	59. Cattlet	1-20-83	82. Easley	3-16
37. Bell	9-23-83	60. Clegg	11-30-83	83. Easley	2-24
38. Bennett	11-3-83	61. Clegg	9-6-83	84. Easton	9-3-
39. Bellville	9-16-83	62. Coe	12-13-83	85. Emrick	12-8
40. Bellville	1-25-83	63. Colvin	11-14-83	86. Evans	8-8-8
41. Bellville	9-16-83	64. Cosgrove	7-26-83	87. Faldute	5-4-8
42. Betten	11-9-83	65. Cosgrove	2-6-83	88. Fletcher	10-3-
43. Billiter	10-10-83	66. Craig	5-13-83	89. Flax	12-1-
44. Billiter	5-16-83	67. Cavise	9-27-83	90. Flax	7-12

9. Extended To: ☐ 9a. Date 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ 12. Type of Inspection C E F 13. Event Number 5 2 3 9 2 7 1 1

14. Signature Leslie R Ohle AR Number 2 1 5 6 2

Form 7000-3a, Apr 82 (revised)

Mine Citation/Order Continuation

Mine Safety and Health Administration

1. Dated (original issue) 11/02/84 2. Citation/Order Number 2328836-

3. Subsequent Action ☐ Continuation ☒ 4. Date 11/02/84 5. Time(24 hr. clock) 0925 6. Served To Thomas Biega

7. Operator Quecto Mining Company Mine Powhatan No 4 8. Mine ID 33-01157- (Contractor)

Justification For Action

96. Flek	1-17-83	114. Hulsey	11-11-83	132. Mercer	12-23-8
97. Fhwcis	9-8-83	115. Hunt	11-9-83	133. Metts	7-19-8
98. Friend	10-10-83	116. Ice	12-15-83	139. Meats	5-3-8
99. Friend	5-4-83	117. Ickes	10-27-83	140. Monk	5-19-8
95. Fullerton	2-3-83	118. Jones	10-9-83	141. Moore	7-28-8
96. Gallatin	10-10-83	119. Jenkins	11-1-83	142. Nagel	5-5-8
97. Gliddon	8-8-83	120. Kanzigg	10-24-83	143. Nagy	11-16-8
98. Goeske	11-15-83	121. Kinkel	3-21-83	144. Nagy	4-4-8
99. Griffin	11-21-83	122. Kinney	9-22-83	145. Nalley	11-2-8
100. Griffith	9-19-83	123. Knight	11-4-83	146. Newell	3-8-8
101. Griffith	1-4-83	124. Koch	8-26-83	147. Newell	10-3
102. Harman	5-12-83	125. Kosky	3-5-83	148. Nolan	7-12
103. Harman	11-28-83	126. Lee	11-29-83	149. Nolan	1-12
104. Haslam	11-9-83	127. Lockhart	8-14-83	150. Norris	12-12
105. Haddleson	8-6-83	128. LoCoco	12-20-83	151. Nuzem	5-12
106. Hensel	12-15-83	129. Loy	2-21-83	152. O Dell	10-3
107. Heathcox	12-19-83	130. Mawyer	10-17-83	153. Palmer	9-23
108. Hess	10-4-83	131. Mealing	3-30-83	154. Parsons	12-2
109. Hess	10-4-83	132. Mealing	5-9-83	155. Patch	2-16
110. Hess	2-29-83	133. May	6-22-83	156. Peaticacini	12-12
111. Hess	4-6-83	134. Mayhugh	6-7-83	157. Peaticacini	1-25
112. Huffman	3-27-83	135. McClay	6-23-83	158. Pezanowski	6-8
113. Huffman	3-27-83	136. McClay	3-3-83	159. Pitman	9-19

9. Extended To: ☐ 9a. Date Mo. Da. Yr. 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ 12. Type of Inspection C E F 13. Event Number S 2 3 9 2 7 1

14. Signature Leslie R Oblon AR Number 2 1 5 4 3

MSHA Form 7000-3a, Apr 82 (revised)

Mine Citation/Order
Continuation

Mine Safety and Health Administration

1. Dated (original issue) 1/ 02/ 84 (Mo. Da. Yr.) 2. Citation/Order Number 2328836-

3. Subsequent Action ☐ Continuation ☒ 4. Date 1/ 02/ 84 (Mo. Da. Yr.) 5. Time(24 hr. clock) 0950 6. Served To Thomas Beigh

7. Operator Quanta Mining Company Mine Rushton No. 4 8. Mine ID 33-01157- (Contractor)

Justification For Action

160. Pettit	8-30-83	183. Starkey	6-28-83	206. Wharton	3-23-8	
161. Price	9-1-83	184. Starkey	4-21-83	207. Wheeler	4-8-8	
162. Price	8-19-83	185. Starkey	1-18-83	208. Wildman	4-20-8	
163. Pugh	12-12-83	186. Stewart	1-10-83	209. Wildman	8-24-8	
164. Reisberger	6-7-83	187. Sweatzmiller	9-15-83	210. Windlan	10-6-8	
165. Richards	4-12-83	188. Swiger	9-7-83	211. Windlan	5-2-8	
166. Richeson	8-24-83	189. Swiger	8-19-83	212. Wissman	12-15-8	
167. Rogers	6-16-83	190. Talbot	6-23-83	213. Wissman	9-1-8	
168. Rose	12-14-83	191. Talbot	5-11-83	214. Yoho	10-22-	
169. Ruckman	4-18-83	192. Theobald	5-1-83	215. Young	2-15-	
170. Ruggiero	9-12-83	193. Thompson	8-13-83	216. Yourkavich	6-14-	
171. Sadlowski	6-2-83	194. Thorn	11-10-83	217. Yankie	1-17-	
172. Salem	3-14-83	195. Thorn	5-17-83	218. Ames	1-12-8	
173. Schmidt	11-26-83	196. Tierney	10-25-83	219. Glascock	3-14-	
174. Seladuki	2-2-83	197. Tierney	6-7-83	220. Koontz	3-14-	
175. Seladuki	11-14-83	198. Tippins	9-23-83			
176. Selmon	6-15-83	199. Tipple	9-7-83			
177. Shinek	4-20-83	200. Teigs	10-4-83			
178. Shoukas	6-20-83	201. Travis	4-22-83			
179. Smith	8-10-83	202. Van Dyne	4-22-83			
180. Sofia	4-27-83	203. Vanscoy	12-8-83			
181. Species	1-31-83	204. Wayt	12-5-83			
182. Stacey	11-30-83	205. Weber	4-24-83			

9. Extended To: ☐ 9a. Date (Mo. Da. Yr.) 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection C E F 13. Event Number S 2 3 9 2 7 1

14. Signature Leslie R Ofelt AR Number 2156 2

MSHA Form 7000-3a, Apr 82 (revised)

Mine Safety and Health Administration

Section I—Violation Data

1. Type of issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 11/02/84 (Mo./Da./Yr.)
3. Time (24 hr. clock): 0955
4. Citation/Order Number: 2328838
5. Served To: T. Braga
6. Operator: Cowarts Mining Company
7. Mine: Powhatan No. 4
8. Mine ID: 33-01157 (Coal/Metal/Nonmetal)
9. Type of Action: 104-a-
10. Violation: 1 A. Health [ ] Safety [ ] Other [X] B. Section of Act: - C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice

During the year of 1984, the following mine employees had injuries which resulted in a reportable occupational injury with days away from work and these occupational injuries were not reported to MSHA using 7000-1 forms:

Employee	Injury date	Employee	Injury date
1. Amos	4-17-84	15. Bethall	5-9-84
2. Amos	2-24-84	16. Booth	4-16-84
3. Anderson, D.	3-13-84	17. Broadwater	4-11-84
4. Anderson, G.	1-9-84	18. Bunda	5-8-84
5. Arno	5-2-84	19. Conaway	2-18-84
6. Barr	1-10-84	20. Conyard	1-5-84
7. Barrier	3-26-84	21. Crane	5-23-84
8. Basil	4-5-84	22. Dare	1-9-84
9. Beatty	3-9-84	23. Davis, Jr.	3-20-84
10. Bell	2-11-84	24. Delaney	5-17-84
11. Bennett	4-2-84	25. Dennison	5-2-84
12. Billiter	4-27-84	26. Dillon	5-9-84
13. Billiter	2-23-84	27. Dingle	5-31-84
14. Blake	1-19-84	28. Earley	2-16-84

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated (Mo./Da./Yr.):
17. Termination Due: A. Date: 11/16/84 (Mo./Da./Yr.) B. Time (24 hr. clock): 0830 C. Signature: Franklin Hamby D. AR Number: 21525 E. Use continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date (Mo./Da./Yr.): B. Time (24 hr. clock): C. Signature: D. AR Number:

Section III—Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]
21. Gravity
A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]
C. Number of persons who would be affected if the event occurred or were to occur: 000
22. Good Faith
A. Failure to abate within the time period given [ ]
B. Signature: Franklin Hamby D. AR Number: 21525

Section IV—Automated System Data

23. Type of Inspection (activity code): CEF
24. Event Number: 5239271
25. Primary or Mill:

MSHA Form 7000-3, Apr 82, (revised)

Mine Citation/Order Continuation

Mine Safety and Health Administration

1. Dated (original issue) 11 Mo. 02 Da. 84 Yr. 2. Citation/Order Number 2328383-

3. Subsequent Action ☐ Continuation ☒ 4. Date 11 Mo. 02 Da. 84 Yr. 5. Time(24 hr. clock) 0955 6. Served To T. Briggs

7. Operator Quarto Mining Company Mine Powhatan No. 4 8. Mine ID 33-01157- (Corrector)

Justification For Action

I

29.	Easton	2-15-84	51.	Kalo	3-27-84
30.	Eikleberry	4-12-84	52.	Koontz	6-12-84
31.	Emerick	4-14-84	53.	Lee	3-15-84
32.	Enart	2-15-84	54.	Lantz	4-19-84
33.	Faldute	1-17-84	55.	Lantz	2-1-84
34.	Flitcher	4-13-84	56.	Mahoney	4-16-84
35.	Flo	3-2-84	57.	Maney	4-10-84
36.	Folleston	5-29-84	59.	Mc Coy	4-25-84
37.	Hamilton	5-9-84	59.	Mc Knight	5-10-84
38.	Harman	2-29-84	60.	Mercer	1-29-84
39.	Harris	3-16-84	61.	Mooney	5-2-84
40.	Hartman	1-21-84	62.	Nearn	3-23-84
41.	Haught	5-10-84	63	Parks	3-19-84
42.	Hayes	3-14-84	64.	Potts	2-27-84
43.	Headley	2-15-84	65.	Ratka	3-7-84
44.	Hensel	2-29-84	66.	Ravencraft	2-22-84
45.	Hogue	3-3-84	67	Reed	2-10-84
46.	Hulsey	5-23-84	68.	Reed	3-12-84
47.	Hunt	3-20-84	69.	Reel	2-10-84
48.	Johnson	1-10-84	70.	Rokovich	2-16-84
49.	Johnson	5-9-84	71.	Schilling	3-6-84
50.	Jones	4-10-84	72.	Schultz	5-29-84

9. Extended To: ☐ 9a. Date Mo. Da. Yr. 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ 12. Type of Inspection C E F 13. Event Number 52 39 2 71

14. Signature Franklin Hooker AR Number 21525

MSHA Form 7000-3a, Apr 82 (revised)

Mine Citation / Order

Continuation

Mine Safety and Health Administration

1. Dated (original issue): 11 Mo. 02 Da. 84 Yr. | 2. Citation/Order Number: 2328737-

3. Subsequent Action ☐ Continuation ☒ | 4. Date: 11 Mo. 02 Da. 84 Yr. | 5. Time(24 hr. clock): 0955 | 6. Served To: T. Biega

7. Operator: Quarto Mining Company | Mine: Pendleton No 4 | 8. Mine ID: 33-01155-

(Contractor)

Justification For Action

1

73. Sofia 4-19-84

74. Steele 2-14-84

75. Stewart 4-12-84

76. Stewart 9-3-84

77. Trigg 1-17-84

78. Weed 1-17-84

79. Weber 3-21-84

80. White 5-1-84

81. Hams 3-10-84

Person in charge was T. Biega safety analyst.

9. Extended To: ☐ | 9a. Date Mo. Da. Yr. | 9b. Time(24 hr. clock) | 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ | 12. Type of Inspection: C E F | 13. Event Number: S 2 3 9 2 7 1

14. Signature: Franklin Hawkes | AR Number: 2 1 5 2 5

MSHA Form 1000-3a, Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of Issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: Mo. 02 Da. 08 Yr. 85
3. Time (24 hr. clock): 0935
4. Citation/Order Number: 2326798
5. Served To: Percy Hawkins
6. Operator: The NACCO Mining Company
7. Mine: Powhatan No 6
8. Mine ID: 33-01159 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health Safety Other [X]; B. Section of Act; C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice

During the year 1982, January thru December, the following mine employees had injuries which resulted in reportable occupational injuries with days away from work and these occupational injuries were not reported to MSHA using the 7000-1 forms. Percy Hawkins, Safety Director was the person in charge.

EMPLOYEE	INJURY DATE		
1. Benson	7-29-82	13. Jaeger	8-31-82
2. Benson	11-8-82	13. Long	2-8-82
3. Benson	9-26-82	14. McCloud	5-27-82
4. Decker	8-11-82	15. Thuring	10-20-82
5. Decker	6-24-82	16. Brocklehurst	7-6-82
6. Heil	6-21-82	17. Booth	6-11-82
7. Holsky	2-9-82	18. Robinson	10-7-82
8. Holland	12-6-82	19. Moore	3-1-82
9. Houston	11-23-82		
10. Houston	3-10-82		
11. Huffman	7-21-82		

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated: Mo. Da. Yr.
17. Termination Due: A. Date: Mo. 02 Da. 25 Yr. 85; B. Time (24 hr. clock): 0900; C. Signature: Joseph F Zarello; D. AR Number: 21552; [ ] See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date: Mo. Da. Yr.; B. Time (24 hr. clock); C. Signature; D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]

21. Gravity

A. The occurrence of the event against which the cited standard is directed was:
No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be:
No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]

C. Number of persons who would be affected if the event occurred or were to occur: 000

22. Good Faith

A. Failure to abate within the time period given [ ]
B. Signature: Joseph F Zarello
C. AR Number: 21552

Section IV—Automated System Data

23. Type of Inspection (activity code): CEF
24. Event Number: 5294357
25. Primary or Mill:

MSHA Form 7000-3, Apr 82, (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data
1. Type of issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 02/08/85 (Mo. Da. Yr.)
3. Time (24 hr. clock): 1000
4. Citation/Order Number: 2326799
5. Served To: Percy Hawkins
6. Operator: The NACCO Mining Company
7. Mine: Powhatton No. 6
8. Mine ID: 33-01159 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health Safety [ ] Other [X] B. Section of Act
Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice:

During the year 1983, January thru December, the following mine employees had injuries which resulted in reportable occupational injuries with days away from work and these occupational injuries were not reported to MSHA using the 7000-1 Forms. Percy Hawkins, Safety Director, was the person in Charge

EMPLOYEE	INJURY DATE				
1. Baldo	6-9-83	12. Christmon	7-13-83	23. Holland	4-15-83
2. Benson	2-14-83	13. DaHon	11-7-83	24 Hickman	11-17-83
3. Boston	9-30-83	14 Douglass	12-24-83	25. Hobley	3-9-83
4. Brooks	1-21-83	15. Dixon	5-19-83	26 Houston	7-13-83
5. Brooks	10-17-83	16. Eichorn	4-8-83	27 Kaylor	7-25-83
6. Burch	5-10-83	17. Eichorn	11-1-83	28 Lenart	8-8-83
7. Benson	10-25-83	18. Gochnaur	7-28-83	29 Kinney	3-9-83
8. Benson	1-18-83	19. Grear	7-20-83	30 Lucas	5-2-83
9. Benson	12-22-83	20. Gust	12-17-83	31. Wise	12-19-83
10. Carpenter	11-21-83	21. Drake	6-9-83	32 Wright	6-7-83
11. Carpenter	2-7-83	22. Duffy	11-28-83	33. Wiggins	12-22-83

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated (Mo. Da. Yr.):
17. Termination Due: A. Date 02/25/85 (Mo. Da. Yr.) B. Time (24 hr. clock) 0900 C. Signature Joseph T. Zullo D. AR Number 2155 2 [X] See continuation form (MSHA Form 7000-3a)

Section II—Termination Action
18. Action to Terminate

19. Terminated: A. Date (Mo. Da. Yr.) B. Time (24 hr. clock) C. Signature D. AR Number

Section III—Inspector's Evaluation
20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]
21. Gravity
A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]
C. Number of persons who would be affected if the event occurred or were to occur: 000
22. Good Faith
A. Failure to abate within the time period given [ ]
B. Signature Joseph T. Zullo C. AR Number 2155 2

Section IV—Automated System Data
23. Type of Inspection (activity code): CEF
24. Event Number: 5294357
25. Primary or Mill:

MSHA Form 7000-3, Apr 82, (revised)

Continuation — Mine Safety and Health Administration

1. Issued (original issue): 02/08/85 — 2. Citation/Order Number: 2326799-

3. Subsequent Action ☐ Continuation ☒ — 4. Date: 02/08/85 — 5. Time(24 hr. clock): 10/15 — 6. Served To: Percy Hawkins

7. Operator: The NACCO Mining Company — Mine: Bulleston No. 6 — 8. Mine ID: 33-01159- — (Contractor)

Justification For Action

34. Studeare 11-4-83
35. Burr 8-15-83
36. Booth 5-20-83
37. Bishop 10-14-83
38. Hawasky 4-3-83
39. Brooks 3-15-83
40. Street 12-23-83
41. Moore 8-18-83
42. Swallie 7-21-83
43. Long 5-10-83
44. Benson 4-19-83
45. Shoemaker 7-11-83
46. Wells 3-31-83
47. Sligar 4-14-83
48. Sorkman 4-12-83
49. Rosepapa 10-6-83
50. Ritz 11-15-83
51. Phillips 10-6-83
52. Nicholas 10-18-83
53. Myers 10-17-83
54. Merryman 8-9-83
56. McClay 11-8-83
56. Matusik 11-2-83

9. Extended To: ☐ — 9a. Date — 9b. Time(24 hr. clock) — 10. Vacated ☐ Terminated ☐ Modified ☐

11. Sue Continuation Form ☐ — 12. Type of Inspection: C EF — 13. Event Number: 5294357

14. Signature: Joseph F. Faulla — AR Number: 24552

MSHA Form 7000-3a, Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of issuance (check one) Citation [X] Order [ ] Safeguard [ ]
2. Date 02 08 85 (Da. Yr.) 3. Time (24 hr. clock) 1035 4. Citation/Order Number 2326800
5. Served To Percy Hawkins
6. Operator The WACCO Mining Company
7. Mine Poulaton No. 6
8. Mine ID 33-01159 (Contractor)
9. Type of Action 104-a-
10. Violation A. Health Safety, Other [X] B. Section of Act - C. Part/Section of Title 30 CFR 50.20-
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice

During the year 1984, January thru Oct. 23rd, the following mine employees had injuries which resulted in reportable occupational injuries. With days away from work and these occupational injuries were not reported to MSHA using the 7000-1 Forms. Percy Hawkins, Safety Director, was the person in charge.

EMPLOYEE INJURY DATE

1. Abbott	7-18-84	12. Walls	5-16-84
2. Basham	7-3-84	13. Edwards	5-3-84
3. Brooks	1-3-84	14. Drake	1-9-84
4. Douglass	5-31-84	15. Bulger	7-19-84
5. Gabbard	8-8-84	16. Craft	4-30-84
6. Dubail	6-15-84	17. Wallace	5-17-84
7. Halsey	6-21-84	18. Wilson	2-13-84
8. Jasper	6-20-84	19. Schafer	4-13-84
9. Mellott	3-12-84	20. Roby	6-21-84
10. Yanosik	4-12-84	21. Moore	2-17-84
11. Swallie	4-6-84	22. Mercer	2-29-84

14. Initial Action Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number
16. Dated Mo. Da. Yr.
17. Termination Due: A. Date 02 25 85 (Da. Yr.) B. Time (24 hr. clock) 0900 C. Signature Joseph T. Trolla D. AR Number 21552 E. See continuation form (MSHA Form 7000-3a) [ ]

Section II—Termination Action

18. Action to Terminate

18. Terminated A. Date (Mo. Da. Yr.) B. Time (24 hr. clock) C. Signature D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one) A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]

21. Gravity

A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]

C. Number of persons who would be affected if the event occurred or were to occur: 000

22. Good Faith

A. Failure to abate within the time period given [ ]

B. Signature Joseph T. Trolla C. AR Number 21552

Section IV—Automated System Data

23. Type of Inspection (activity code) CEF 24. Event Number 5247357 25. Primary or Mill

MSHA Form 7000-3, Apr 82, (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I - Violation Data
1. Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐
2. Date: 01 / 11 / 85 (Mo. / Da. / Yr.)
3. Time (24 hr. clock): 0845
4. Citation/Order Number: 2328810
5. Served to: Gary Silverio
6. Operator: Quarto Mining Company
7. Mine: Powhatan No. 7
8. Mine ID: 33-02624 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health ☐ Safety ☐ Other ☒ B. Section of Act: - C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) ☐
11b. Written Notice ☐
12. Condition or Practice

During the year 1982, January thru December, the following mine employees had injuries which resulted in reportable occupational injuries with days away from work and these occupational injuries were not reported to MSHA using the 7000-1 forms.

Gary Silverio Safety/Administrative was the person in charge

EMPLOYEE	INJURY DATE				
1. Arthurs	3-4-82	10. Ferguson	12-14-82	19. Vesey	11-14-82
2. Ankrom	8-2-82	11. Haines	7-29-82	20. Woolby	10-10-82
3. Boughman	11-11-82	12. Keller	8-8-82	21. Stout	3-4-82
4. Briggs	12-7-82	13. Keys	11-1-82		
5. Claugus	12-2-82	14. Lewis	12-14-82		
6. Cumberledge	10-31-82	15. Mahl	11-1-82		
7. Cumberledge	11-21-82	16. McGee	10-27-82		
8. Dally	11-23-82	17. Ridge way	11-24-82		
9. Davis	9-9-82	18 Smith	9-23-82		

14. Initial Action: Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number:
16. Dated: Mo. Da. Yr.
17. Termination Due: A. Date 02 / 11 / 85 (Mo. / Da. / Yr.) B. Time (24 hr. clock) 0900 C. Signature Joseph T. Zuello D. AR Number 21552 See continuation form (MSHA Form 7000-3a)

Section II - Termination Action
18. Action to Terminate

19. Terminated: A. Date (Mo. / Da. / Yr.) B. Time (24 hr. clock) C. Signature D. AR Number

Section III - Inspector's Evaluation
20. Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐
21. Gravity
A. The occurrence of the event against which the cited standard is directed was: No Likelihood ☒ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays ☒ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐
C. Number of persons who would be affected if the event occurred or were to occur: 000
22. Good Faith
A. Failure to abate within the time period given ☐
B. Signature Joseph T. Zuello C. AR Number 21552

Section IV - Automated System Data
23. Type of Inspection (activity code): CEF
24. Event Number: 5294355
25. Primary or Mill:

Form 7000-3 Rev. 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data
1. Type of issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 01/11/85 (Mo./Da./Yr.) 3. Time (24 hr. clock): 0930 4. Citation/Order Number: 2328811
5. Served To: Gary Silveria
6. Operator: Quarto Mining Company
7. Mine: Powhatan No. 7
8. Mine ID: 33-02624 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health Safety or Other [X] B. Section of Act
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Part/Section of Title 30 CFR: 50.20-a

12. Condition or Practice

During the year 1983, January thru December, the following mine employees had injuries which resulted in reportable occupational injuries with days away from work and these occupational injuries were not reported to MSHA, using the 7000-1 forms Gary Silveria Safety/Administrative was the person in charge.

EMPLOYEE	INJURY DATE				
1. Alexander	12-29-83	11. Briggs	12-14-83	21. Fagan	7-21-83
2. Ankrom	12-21-83	12. Brown	9-25-83	22. Farnsworth	4-11-83
3. Arthurs	7-19-83	13. Burkhart	5-31-83	23. Graham	4-29-83
4. Auth	11-4-83	14. Cline	5-10-83	24. Hails	12-7-83
5. Barnes	2-3-83	15. Cochran	7-7-83	25. Harrison	11-23-83
6. Barnes	7-30-83	16. Dawson	5-11-83	26. Haught	6-23-83
7. Barnes	12-29-83	17. Eakins	3-7-83	27. Haught	2-9-83
8. Beaver	12-13-83	18. Eakins	4-29-83	28. Herrick	8-1-83
9. Coughman	12-13-83	19. Eakins	6-17-83	29. Jones	1-29-83
10. Briggs	2-21-82	20. Eakins	10-5-83	30. Keller	4-7-83

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ]
15. Citation/Order Number: Written Notice [ ]
16. Dated: (Mo./Da./Yr.)
17. Termination Due: A. Date: 02/11/85 (Mo./Da./Yr.) B. Time (24 hr. clock): 0900 C. Signature: Joseph J. Faella D. AR Number: 21552 [X] See continuation form (MSHA Form 7000-3a)

Section II—Termination Action
18. Action to Terminate

19. Terminated: A. Date: (Mo./Da./Yr.) B. Time (24 hr. clock): C. Signature: D. AR Number:

Section III—Inspector's Evaluation
20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]
21. Gravity
A. The occurrence of the event against which the cited standard is directed was: No Likelihood [ ] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]
C. Number of persons who would be affected if the event occurred or were to occur: 000
22. Good Faith
A. Failure to abate within the time period given [ ] B. Signature: Joseph J. Faella F. AR Number: 21552

Section IV—Automated System Data
23. Type of Inspection (activity code): C E F 24. Event Number: 5294355 25. Primary or Mill:

MSHA Form 7000-3 Apr 82, (revised)

Mine Citation/Order
Continuation

Mine Safety and Health Administration

V

1. Dated (original issue) 01 11 85 (Mo. Da. Yr.) 2. Citation/Order Number 2323311-

3. Subsequent Action ☐ Continuation ☒ 4. Date 01 11 85 (Mo. Da. Yr.) 5. Time(24 hr. clock) 0945 6. Served To Gary Silverio

7. Operator Quarto Mining Company Mine Powhatan No. 7 8. Mine ID 33-02684- (Contractor)

Justification For Action

1

31. Kolvek	11-23-83	53. Ridgeway	11-21-83
32. Kraus	9-6-83	54. Ridgeway	3-9-83
33. Kays	6-15-83	55. Ridgeway	7-26-83
34. Lewis	7-29-83	56 Robbins	2-4-83
35. Landers	1-12-83	57. Smith	4-29-83
36. LeMasters	1-18-83	58. Smith	8-22-83
37. LeMasters	12-13-83	59. Smith	2-8-83
38. Lewis	10-7-83	60. Suchan	5-3-83
39 Lewis	7-6-83	61. Tusic	2-26-83
40. Lewis	4-28-83	62. Willhoite	11-22-83
41. McCloud	6-9-83	63. Wade	11-3-83
42. McCloud	9-13-83	64. Yoho	9-25-83
43. McClellan	3-3-83	65. Zeno	4-21-83
44. McClellan	9-1-83		
45. McClellan	9-13-83		
46 Meredith	9-19-83		
47. Mercer	6-7-83		
48. Oleska	8-8-83		
49. Palmer	6-6-83		
50. Palmer	11-27-83		
51 Petro	2-1-83		
52. Petro	6-10-83		

8. Extended To ☐ 8a. Date (Mo. Da. Yr.) 8b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection CEF 13. Event Number 5294355

14. Signature Joseph F. Zeno AR Number 215552

MSHA Form 7000-3a, Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of Issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 01 / 11 / 85 (Mo / Da / Yr.)
3. Time (24 hr. clock): 1005
4. Citation/Order Number: 2328812
5. Served To: Gary S. Ivesia
6. Operator: Quatro Mining Company
7. Mine: Powhatan No. 7
8. Mine ID: 33-02624 (Contractor)
9. Type of Action: 1 / 104-a- , - -
10. Violation: A. Health Safety Other [X] B. Section of Act - C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice:

During the year 1984, January thru Oct 23, the following mine employees had injuries which resulted in reportable occupational injuries with days away from work. These occupational injuries were not reported to MSHA using the 7000-1 forms. Gary S. Ivesia Safety/Administrative was the person in charge

EMPLOYEE — INJURY DATE

1. Auth	3-6-84	13. Dawson	1-12-84	25. McKay	2-13-84
2. Allison	2-14-84	14. George	2-14-84	26. Pfalzgraf	7-17-84
3. Amos	4-3784	15. Graham	3-4-84	27. Petro	5-24-84
4. Anderson	6-11-84	16. Hupp	2-28-84	28. Seavers	5-23-84
5. Arthurs	5-21-84	17. Hupp	1-4-84	29. Smith	5-30-84
6. Barnes	3-7-84	18. Jones	5-31-84	30. Smith	4-83-84
7. Baughman	3-26-84	19. Kelker	9-10-84	31 Yoho	2-28-84
8. Baughman	3-26-84	20. Kelker	7-16-84		
9 Bellomy	4-12-84	21. Kelly	6-18-84		
10. Cline	5-31-84	22. Kovalo	5-5-84		
11. Crawford	1-3-84	23. Kelker	9-4-84		
12. Crawford	2-7-84	24. Mayle	3-14-84		

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated (Mo. / Da. / Yr.):
17. Termination Due: A. Date 02 / 11 / 85 B. Time (24 hr. clock) 0900 C. Signature Gary S. Ivesia D. AR Number 21552 E. See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date (Mo. / Da. / Yr.) B. Time (24 hr. clock) C. Signature D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]

21. Gravity

A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]

C. Number of persons who would be affected if the event occurred or were to occur: 000

22. Good Faith: A. Failure to abate within the time period given [ ]
B. Signature: Gary S. Ivesia C. AR Number 21552

Section IV—Automated System Data

23. Type of Inspection (activity code): CEF 24. Event Number 5294355 25. Primary or Mill

Form 7000-3 Apr 82 (revised)

United Mine Workers of America

TELEPHONE
AREA CODE (202) 842-7200

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N.W.
Washington, D.C.
20005

January 29, 1985

David Zegeer, Assistant Secretary
Department of Labor
Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203

Dear Mr. Zegeer:

I received the attached copies of violations issued by MSHA to the North American Coal Company's Quarto No. 4 Mine through our field representatives. The violations were issued on November 28, 1984 following a request for a UMW-requested audit of the company's accident reporting on October 2, 1984.

Although I have not received a report from your office on this matter, I would appreciate it if when you do respond that you advise me as to why MSHA issued only three (3) non-S.&S. $20.00 violations for the company's failure to report over 400 lost-time accidents. That mere penalty action for these violations is beyond belief.

As previously stated, we believe the National accident rates are distorted. As the Quarto No. 4 audit alone shows, there is massive under-reporting of accidents and injuries in the coal industry. The lack of an effective monitoring by your Agency, coupled with the penalty assessed once these violations are found, are two likely reasons for the problem.

I would also appreciate an update or the additional mines I requested an audit on.

Sincerely yours,

Joe Main, Administrator
Department of Occupational
Health and Safety

/dm

Mine Safety and Health Administration

Section I – Violation Data

1. Type of issuance (check one): Citation [X] Order [ ] Safeguard [ ] | 2. Date: 11 02 84 | 3. Time (24 hr. clock): 0955 | 4. Citation/Order Number: 2328838

5. Served To: T. Braga | 6. Operator: Quarto Mining Company

7. Mine: Powhatan No. 4 | 8. Mine ID: 33-01157 (Contractor)

8. Type of Action: 104-a-

10. Violation: A. Health [ ] Safety [ ] Other [X] | B. Section of Act | Part/Section of Title 30 CFR: 50.20-a

11a. Significant and Substantial (see reverse) [ ] | 11b. Written Notice [ ]

12. Condition or Practice

During the year of 1984, the following mine employees had injuries which resulted in a reportable occupational injury with days away from work and these occupational injuries were not reported to MSHA using 7000-1 forms:

Employee	Injury date	Employee	Injury date
1. Amos	4-17-84	15. Bothell	5-9-84
2. Amos	2-29-84	16. Booth	4-16-84
3. Anderson, D.	3-13-84	17. Broadwater	4-11-84
4. Anderson, G.	1-9-84	18. Bundy	5-7-84
5. Arno	5-2-84	19. Conaway	2-18-84
6. Barr	1-10-84	20. Conyard	1-5-84
7. Barrier	3-26-84	21. Crum	5-23-84
8. Basil	4-5-84	22. Davis	1-9-84
9. Beatty	3-9-84	23. Davis, Jr.	3-20-84
10. Bell	2-11-84	24. Delong	5-17-84
11. Bennett	4-2-84	25. Dennison	5-2-84
12. Billiter	4-27-84	26. Dillon	5-9-84
13. Billiter	2-23-84	27. Dinello	5-31-84
14. Blake	1-19-84	28. Earley	2-16-84

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ] | 15. Citation/Order Number | 16. Dated

17. Termination Due: A. Date: 11 16 84 | B. Time (24 hr clock): 0830 | C. Signature: Franklin Hamby | D. AR Number: 71525 | See continuation form (MSHA Form 7000-3a)

18. Terminated: A. Date | B. Time (24 hr clock) | Signature | Inspector Number

Section III – Inspector Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]

21. Gravity

A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]

C. Number of persons who would be affected if the event occurred or were to occur: 000

22. Good Faith

A. Failure to abate within the time period given [ ] | B. Signature: Franklin Hamby | 21525

Section IV – Automated System Data

23. Type of Violation (activity code): CEF | 24. Event Number: 523921 | 25. Primary or Mill

MSHA Form 7000-3 Apr 82 (reissue)

Continuation — Mine Safety and Health Administration

1. Date Assigned: 11 02 84 — 2. Citation/Order Number: 2328383-

3. Subsequent Action ☐ Continuation ☒ — 4. Date: 11 02 84 — 5. Time (24 hr. clock): 0955 — 6. Served To: T. Briggs

7. Operator: Quarto Mining Company — Mine: Powhatan No. 4 — 8. Mine ID: 33-01157- — (Contractor)

Justification For Action

29.	Easton	2-15-84	51.	Kalo	3-27-84
30.	Eikleberg	4-12-84	52.	Koontz	6-12-84
31.	Emerick	4-14-84	53.	Lee	3-15-84
32.	Ewart	2-15-84	54.	Lusty	4-19-84
33.	Faldute	1-17-84	55.	Lusty	2-1-84
34.	Fletcher	4-13-84	56.	Mahoney	4-16-84
35.	Flo	3-2-84	57.	Maney	4-10-84
36.	Fullerton	5-29-84	59.	Mc Coy	4-25-84
37.	Hamilton	5-9-84	59.	Mc Knight	5-10-84
38.	Harman	2-29-84	60.	Mercer	1-29-84
39.	Harris	3-16-84	61.	Mooney	5-2-84
40.	Hartman	1-21-84	62.	Neamo	3-23-84
41.	Haught	5-10-84	63	Parks	3-19-84
42.	Hayes	3-14-84	64.	Potts	2-27-84
43.	Headley	2-15-84	65.	Ratka	3-7-84
44.	Herald	2-21-84	66.	Ravencraft	2-22-84
45.	Hogue	3-3-84	67.	Reed	2-10-84
46.	Hubley	5-23-84	68.	Reed	3-12-84
47.	Hunt	3-20-84	69.	Reed	2-10-84
48.	Johnson	1-10-84	70.	Rothrock	2-16-84
49.	Johnson	5-9-84	71.	Schilling	3-6-84
50.	Jones	4-10-84	72.	Schultz	5-29-84

8. Extended To ☐ — 8a. Date — 8b. Time (24 hour clock) — 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ — 12. Type of Inspection: C E F — 13. Event Number: 5-2-3-9-2-7-1

14. Signature: Franklin Hombo — AR Number: 13152[illegible]

MSHA Form 7000-3a (Apr 82 (revised)

Continuation — Mine Safety and Health Administration

1. Docket (original issue): 11 Mo 02 Da 84 Yr. 2. Citation/Order Number: 2328338 -

3. Subsequent Action ☐ Continuation ☒ 4. Date: 11 Mo 02 Da 84 Yr. 5. Time(24 hr. clock): 0955 6. Served To: T. Biega

7. Operator: Quarto Mining Company Mine: Pinkerton No. 4 8. Mine ID: 33-01157- (Contractor)

Justification For Action

73. Sofia 4-19-84
74. Steele 2-14-84
75. Stewart 4-12-84
76. Stewart 9-3-84
77. Trigg 1-17-84
78. Weed 1-17-84
79. Weber 3-21-84
80. White 5-1-84
81. Hams 3-10-84

Person in charge was T. Biega, safety analyst.

9. Extended To ☐ 9a. Date: Mo Da Yr. 9b. Time(24 hr. clock): 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection: CEF 13. Event Number: 6239271

14. Signature: Franklin Hawkins AH Number: 15215

Mine Form 7000-3 Rev 8-82 (reverse)

Mine Safety and Health Administration

Section I – Violation Data

1. Type of Issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 11/02/84
3. Time (24 hr. clock): 0810
4. Citation/Order Number: 2328837
5. Served To: T. Biega
6. Operator: Quarto Mining Company
7. Mine: Powhatan No. 4
8. Mine ID: 33-01157 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health [ ] Safety [ ] Other [X] B. Section of Act: - C. Part/Section of Title 30 CFR: 50.20-
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice

During the year of 1982 the following mine employees had injuries which resulted in a reportable occupational injury with days away from work and these occupational injuries were not reported to MSHA using 7000-1 forms:

Employees	Injury Date		
1. Amos	8-30-82	16. Colvin	5-2-82
2. Anderson	10-21-82	17. Crowe	12-7-82
3. Ashcraft	8-12-82	18. Crow	12-16-82
4. Ashcraft	9-7-82	19. Dimeller, M.	9-7-82
5. Ashcraft	10-6-82	20. Dotson	1-7-82
6. Bank	9-21-82	21. Dumbler	9-16-82
7. Bass	12-13-82	22. Earley	1-6-82
8. Bilbiter	12-29-82	23. Eden	9-28-82
9. Bingam	11-20-82	24. Eddy	2-16-82
10. Bobbitt, R.	10-14-82	25. Emelish	12-19-82
11. Bobbitt, R.	2-3-82	26. Erving	9-10-82
12. Bosley	11-4-82	27. Estep	9-9-82
13. Brantley	9-15-82	28. Ferguson	12-13-82
14. Brega	12-13-82	29. Flo	12-29-82
15. Cattarelli	10-17-82	30. Flo	11-24-82

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated:
17. Termination Due: A. Date: 11/16/84 B. Time (24 hr. clock): 0830 C. Signature: Franklin Hombo D. AR Number: 21525 Use continuation form (MSHA Form 7000-3a)
18. Action to Terminate
19. Terminated: A. Date: B. Time (24 hr. clock): C. Signature: D. AR Number:

Section III – Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]
21. Gravity
A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]
C. Number of persons who would be affected if the event occurred or were to occur: 000
22. Good Faith
A. Failure to abate within the time period given [ ]
B. Signature: Franklin Hombo C. AR Number: 21525

Section IV – Automated System Data

23. Type of Inspection (activity code): CEF 24. Event Number: 5239271 25. Primary or Mill:

MSHA Form 7000-3, Apr 82. (revised)

Continuation — Mine Safety and Health Administration

1. Dated (original issue): 11 02 84 — 2. Citation/Order Number: 2328373-

X Subsequent Action ☐ Continuation ☒ — 4. Date: 11 02 84 — 5. Time (24 hr. clock): 0810 — 6. Served To: T. Brega

7. Operator: Quarto Mining Company — Mine: Paulton No. 4 — 8. Mine ID: 33-01157- — (Contractor)

Justification For Action

31.	Fox	10-10-82	51.	Kastrava	10-14-82
32.	Friend	11-9-82	52.	Kenyon	2-26-82
33.	Fullerton	12-29-82	53.	Mahony	10-29-82
34.	Fullerton	8-12-82	54.	Marling	11-22-82
35.	Griffin	10-21-82	55.	Marling	9-22-82
36.	Griffith	1-24-82	56.	Merritt	10-26-82
37.	Habenicht	11-22-82	57.	Monte	8-3-82
38.	Harman	10-26-82	58.	Nardo	8-1-82
39.	Harman	10-19-82	59.	Norris	10-9-82
40.	Harman	9-20-82	60.	Pergamonski	9-15-82
41.	Haslam	11-16-82	61.	Price	12-29-82
42.	Haslam	11-10-82	62.	Read	12-23-82
43.	Haslam	11-24-82	63.	Allen	10-13-82
44.	Hailam	11-22-82	64.	Roberts	12-13-82
45.	Hansel	12-7-82	65.	Rogers	8-2-82
46.	Hartley	7-3-82	66.	Scaggiari	10-14-82
47.	Hess	11-5-82	67.	Ruggiero	9-27-82
48.	Hora	9-13-82	68.	Sabo	9-10-82
49.	Hughes	8-9-82	69.	Schmidli	11-9-82
50.	Hulley	9-16-82	70.	Schmidt	12-21-82

9. Extended To ☐ — 9a. Date — 9b. Time (24 hr. clock) — 10. Vacated ☐ Terminated ☐ Mod. for ☐

11. See Continuation Form ☒ — 12. Type of Inspection: C E F — 13. Event Number: 5239271

14. Signature: Franklin Hanka — AR Number: 2175255

MSHA Form 7000-23 Ad. Ed. (Rev. 3)

Continuation — Mine Safety and Health Administration

1. Dated (original issue) 11 02 84 — 2. Citation/Order Number 2328737-

3. Subsequent Action ☐ Continuation ☒ — 4. Date 11 02 84 — 5. Time(24 hr. clock) 0710 — 6. Served To T. Biega

7. Operator Quarto Mining Company — Mine Powhatan No. 4 — 8. Mine ID 33-01157- — (Contractor)

Justification For Action

71. Schmidt	9-15-82	91. Funkhouser	5-22-82
72. Sneddon	10-12-82	92. Hannan	9-23-82
73. Spence	11-19-82	93. Winland	3-12-82
74. Starkey	11-29-82	94. Marling	3-17-82
75. Stewart	11-17-82	95. Sales	7-25-82
76. Stiles	7-26-82	96. Hartley	9-11-82
77. Stonebraker	6-13-82	97. Adams	6-4-82
78. Taylor	3-8-82	98. Allen	10-13-82
79. Tippins	8-6-82	99. Hart	3-15-82
80. Trigg	2-11-82	100. Taylor	3-8-82
81 Truax	10-26-82	101. Barnes	3-30-82
82. Ware	9-2-82	102. Hess	4-5-82
83. Ward	10-19-82	103. Manson	4-17-82
84. Wallbrate	11-10-82	104. Harman	4-26-82
85. Wissman	9-7-82	105. Kastavis	5-29-82
86. Wissman	4-16-82	106. Wissman	6-22-82
87. Yahn	12-13-82	107. Merritt	6-23-82
88. Yankee	10-21-82	107. Marling	4-9-82
89. Combs	10-19-82	109. Fullerton	7-27-82
90. Edgington	7-11-82	Hart then Fullerton (89) did not have return to work date.	

Person in charge now T. Biega, Safety Analyst

9. Extended To — 9a. Date — 9b. Time(24 hr. clock) — 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ — 12. Type of Inspection C E F — 13. Event Number 5239271

14. Signature Franklin Hanly — AR Number 21525

MSHA Form 1000-3a. Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I – Violation Data

1. Type of Issuance (check one): Citation [X] Order [ ] Safeguard [ ]
2. Date: 10/24/83 (Mo. Da. Yr.)
3. Time (24 hr. clock): 0810
4. Citation/Order Number: 2328836
5. Served To: Thomas Biega
6. Operator: Quecto Mining Company
7. Mine: Powhatan No. 4
8. Mine ID: 33-01152 (Contractor)
9. Type of Action: 104-a-
10. Violation: A. Health Safety [ ] Other [X] B. Section of Act: - C. Part/Section of Title 30 CFR: 50.20-a
11a. Significant and Substantial (see reverse) [ ]
11b. Written Notice [ ]
12. Condition or Practice:

During the year, 1983, January thru December, the following mine employee had injuries, which resulted in a reported occupational injury with days away from work and this occupational injuries were not reported to MSHA using 7000-1 forms:

Employee	Injury Date				
1. Dinello	6-11-83	8. Anderson	2-24-83	15. Barnes	10-17-83
2. Allensworth	7-30-83	9. Anderson	1-8-83	16. Basil	10-16-83
3. Allsop	12-7-83	10. Antol	2-7-83	17. Blakely	2-16-83
4. Amos	4-20-83	11. Ayers	8-1-83	18. Bliss	11-24-83
5. Anderson	3-2-83	12. Baker	12-22-83	19. Bohall	2-14-83
6. Anderson	7-26-83	13. Baker	7-25-83	20. Bohall	7-21-83
7. Anderson	2-21-83	14. Baranich	11-18-83	21. Booher	12-5-83

13. Accessment:

Thomas Biega, Safety Analyst, was the person in charge.

14. Initial Action: Citation [ ] Order [ ] Safeguard [ ] Written Notice [ ]
15. Citation/Order Number:
16. Dated (Mo. Da. Yr.):
17. Termination Due: A. Date 11/16/84 (Mo. Da. Yr.) B. Time (24 hr. clock) 0830 C. Signature Leslie R Ohler D. AR Number 21562 E. See continuation form (MSHA Form 7000-7)

Section II – Termination Action

18. Action to Terminate

19. Terminated: A. Date (Mo. Da. Yr.) B. Time (24 hr. clock) C. Signature D. AR Number

Section III – Inspector's Evaluation

20. Negligence (check one): A. None [ ] B. Low [ ] C. Moderate [X] D. High [ ] E. Reckless Disregard [ ]
21. Gravity:
A. The occurrence of the event against which the cited standard is directed was: No Likelihood [X] Unlikely [ ] Reasonably Likely [ ] Highly Likely [ ] Occurred [ ]
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be: No lost workdays [X] Lost workdays or restricted duty [ ] Permanently Disabling [ ] Fatal [ ]
C. Number of persons who would be affected if the event occurred or were to occur: 2
22. Good Faith:
A. Failure to abate within the time period given [ ]
B. Signature Leslie R Ohler C. AR Number 21562

Section IV – Automated System Data

23. Type of Inspection (last one): CEF
24. Event Number: 5137201
25. Primary or Mill:

ME A Form 7000-3, April 81 (Modified)

Continuation — Mine Safety and Health Administration

1. Dated (original issue): 11 02 84 — 2. Citation/Order Number: 2328836 —
3. Subsequent Action ☐ Continuation ☒ — 4. Date: 11 02 84 — 5. Time(24 hr. clock): 0850 — 6. Served To: Thomas Biega
7. Operator: Leath Mining Company — Mine: Powhatan No. 4 — 8. Mine ID: 33-01152 — (Contractor)
Justification For Action

22. Booth	12-22-83	45. Billiter	3-22-83	68. Davis	5-4-83
23. Booth	11-10-83	46. Bivegar	9-19-83	69. Delong	3-5-83
24. Boothe	5-8-83	47. Bivegar	2-9-83	70. Delong	7-25-83
25. Bosley	5-12-83	48. Blakely	8-29-83	71. Drapewolf	7-25-83
26. Bowers	9-19-83	49. Bungardner	11-10-83	72. Dennis	6-8-83
27. Brandon	4-7-83	50. Bungardner	8-19-83	73. Dennis	12-8-83
28. Braidwater	10-4-83	51. Bungardner	5-27-83	74. Dennison	11-7-83
29. Brown	9-9-83	52. Burda	11-16-83	75. Dillon	8-7-83
30. Brown	4-18-83	53. Burda	10-27-83	76. Dobbs	11-9-83
31. Buchea	1-25-83	54. Burda	4-18-83	77. Dotson	11-3-83
32. Buska	3-10-83	55. Cain	3-5-83	78. Duke	1-4-83
33. Burgardner	12-1-83	56. Carpenter	10-18-83	79. Dye	3-7-83
34. Bates	8-1-83	57. Carter	3-10-83	80. Easley	11-9-83
35. Bates	8-16-83	58. Cattlet	10-4-83	81. Easley	7-18-83
36. Bell	12-12-83	59. Cattlet	1-20-83	82. Easley	3-16-83
37. Bell	9-23-83	60. Clegg	11-30-83	83. Easley	2-24-83
38. Bennett	11-1-83	61. Clegg	9-6-83	84. Easton	4-3-83
39. Bellville	9-16-83	62. Coe	12-13-83	85. Emrick	12-8-83
40. Bellville	1-25-83	63. Colvin	11-14-83	86. Evans	8-8-83
41. Bellville	9-16-83	64. Cosgrove	7-26-83	87. Falduto	5-4-83
42. Bettin	11-9-83	65. Cosgrove	2-6-83	88. Fletcher	10-3-83
43. Billiter	10-10-83	66. Craig	5-13-83	89. Fike	12-1-83
44. Billiter	5-16-83	67. Cavise	9-27-83	90. Fike	7-12-83

9. Extended To ☐ 9a. Date: Mo. Da. Yr. — 9b. Time(24 hr. clock) — 10. Vacated ☐ Terminated ☐ Modified ☐
11. See Continuation Form ☒ — 12. Type of Inspection: C E F — 13. Event Number: 5 2 3 9 2 7 1
14. Signature: Leslie R. Cobb — AR Number: 2 1 5 6 2

MSHA Form 7000-3a, Aug 82 (reverse)

Mine Citation/Order Continuation

Mine Safety and Health Administration

1. Dated (original issue) 11/02/84 2. Citation/Order Number 2328836-

3. Subsequent Action ☐ Continuation ☒ 4. Date 11/02/84 5. Time(24 hr. clock) 0925 6. Served To Thomas Biega

7. Operator Quecreek Mining Company Mine Powhatan No 4 8. Mine ID 33-01157- (Contractor)

Justification For Action

91. Flack	1-17-83	114. Hulsey	11-11-83	137. Mercer	12-23-8
92. Flowers	9-8-83	115. Hunt	11-9-83	138. Metts	7-19-8
93. Friend	10-10-83	116. Ice	12-15-83	139. Meats	5-3-8
94. Friend	5-4-83	117. Ickes	10-27-83	140. Monk	5-19-8
95. Fulkerson	2-3-83	118. Jones	10-9-83	141. Moore	7-28-8
96. Gallatin	10-10-83	119. Jackson	11-1-83	142. Nagel	5-5-83
97. Glidden	8-8-83	120. Kanzigg	10-24-83	143. Nagy	11-16-8
98. Goeshe	11-15-83	121. Kinkel	3-21-83	144. Nagy	4-4-83
99. Griffin	11-21-83	122. Kinney	9-22-83	145. Nalley	11-2-83
100. Griffith	9-19-83	123. Knight	11-4-83	146. Newell	3-8-83
101. Griffith	1-4-83	124. Koch	8-26-83	147. Newell	10-3-8
102. Harman	5-12-83	125. Kosky	3-5-83	148. Nolan	7-12-8
103. Harman	11-28-83	126. Lee	11-29-83	149. Nolen	1-12-8
104. Haslam	11-9-83	127. Lockhart	8-14-83	150. Norris	12-12-8
105. Haddleson	8-6-83	128. LoCoco	12-20-83	151. Nuzem	5-12-8
106. Hensel	12-15-83	129. Loy	2-21-83	152. O Dell	10-3-8
107. Hentheen	12-19-83	130. Mannee	10-17-83	153. Palmer	9-23-8
108. Hess	10-4-83	131. Mealey	3-30-83	154. Pearson	12-2-8
109. Hess	10-4-83	132. Mealey	7-9-83	155. Petch	2-16-8
110. Hess	7-29-83	133. Miay	6-22-83	156. Pesticcini	12-12-8
111. Hess	4-6-83	134. Mayhugh	6-7-83	157. Pesticcini	1-25-8
112. Huffman	7-27-83	135. McClay	6-23-83	158. Prezewski	6-6-8
113. Huffman	3-27-83	136. McClay	3-3-83	159. Ritter	9-19-8

9. Extended To ☐ 9a. Date 9b. Time 24 hr. clock 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☒ 12. Type of Inspection C E F 13. Event Number S 2 3 9 2 7 1

14. Signature Leslie R Cohn AR Number 2 1 5 6 2

MSHA Form 7000-7 Rev. Jan. 82 (Interim)

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration

1. Dated (original issue) 1/1/82 2. Citation/Order Number 2328834-

Subsequent Action ☐ Continuation ☒ 4. Date 1/1/82 5. Time(24 hr. clock) 0950 6. Served To Thomas Beiga

7. Operator Quarto Mining Company Mine Powhatan No. 4 8. Mine ID 33-01157- (Contractor)

Justification For Action

160. Peart	8-30-83	183. Starkey	6-28-83	206. Wharton	2-23-83
161. Price	9-1-83	184. Starkey	4-21-83	207. Wheeler	4-8-83
162. Price	8-19-83	185. Starkey	1-18-83	208. Wildman	4-20-83
163 Pugh	12-12-83	186. Stewart	1-10-83	209. Wildman	8-24-83
164 Reisberger	6-7-83	187 Sweatzmilke	9-15-83	210. Windlan	10-6-83
165. Richards	4-12-83	188. Swiger	9-7-83	211 Windlan	5-2-83
166 Richeson	8-24-83	189. Swiger	8-19-83	212. Wissmar	12-15-83
167 Rogers	6-16-83	190. Talbot	6-23-83	213. Wissmar	9-1-83
168 Rose	12-11-83	191. Talbot	5-11-83	214. Yoho	10-22-83
169. Ruckman	4-18-83	192. Theobald	5-1-83	215. Young	2-15-83
170. Ruggiero	9-12-83	193. Thompson	8-13-83	216. Yourkovich	6-14-83
171. Sadlowski	6-2-83	194. Thorn	11-10-83	217. Yankie	1-17-83
172. Salem	3-14-83	195. Thorn	5-17-83	218. Amos	1-12-83
173. Schmidt	11-26-83	196. Tierney	10-25-83	219. Glasscock	3-14-83
174. Seladoki	2-2-83	197. Tierney	6-7-83	220. Koontz	3-14-83
175. Selvi	1-14-83	198. Tipple	9-27-82		
176. Selmon	6-15-83	199. Tipple	9-7-83		
177 Shimek	4-20-83	200. Teigg	10-4-83		
178 Slovacek	6-20-83	201. Truax	4-22-83		
179. Smith	8-10-83	202. Van Dyne	4-27-83		
180. Sofia	4-27-83	203. Vansoy	12-8-83		
181. Speece	1-31-83	204. Wayt	12-5-83		
182. Stacey	11-30-83	205. Weber	4-24-83		

9. Extended To ☐ 9a. Date 9b. Time(24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection CEF 13. Event Number S23927I

14. Signature Robert R. Dell AR Number 2156-2

Form 2000-23 (Rev. 4-84) Apr P2 (revised)

Senator METZENBAUM. Now, under those circumstances are you really in a position to say that there has been some improvement, because the evidence would appear to be quite clear that the $20 fine is so unbelievably low. How could you possibly agree to a $20 fine?

Mr. FORD. Senator Metzenbaum, you've covered a number of issues there.

Senator METZENBAUM. Indeed, I did.

Mr. FORD. That I'd like to address. We feel that the statistics kept by the Mine Safety and Health Administration at their center in Denver are the most complete statistics in the health and safety recording of any entity, and when through MSHA's own audit procedure they see a sudden drop or a sudden rise in the incident rates, they do an audit. MSHA was the one that identified the North American Coal Co. issue, and made the determination that if there was underreporting—I don't know the details——

Senator METZENBAUM. Did Mr. Main lie when he said that the violations were issued following a request, a UMW requested audit of the company's accident reporting on October 2, 1984?

Mr. FORD. All that I was informed was that the MSHA's audit determined that the underreporting was a fact.

Senator METZENBAUM. What I'm trying to say to you is that this report that I have here is dated November 2, 1984, and Mr. Main says that they made their request on October 2, 1984.

And it would seem to me that if anybody's entitled to credit for that audit having been made, the Mine Workers are, because they prodded you to do it. Now, am I wrong about that?

Mr. FORD. The United Mine Workers have been a strong partnership with the Government in maintaining safety, and we're in constant communication.

I say that I—not having been in MSHA during that period of time, it's difficult for me to respond to that letter. And I do not know what Mr. Lamonica's response is back to Joe Main.

So on that particular case, I do not feel that that's representative of the industry. And if I might address also that the statistics are used by everyone. They're used by the Mine Workers—statistics of the Mine Safety and Health Administration.

Senator METZENBAUM. You said that's not representative of the industry Could you back that up with some evidentiary facts? Because here is an audit they asked for. The audit report indicates 400 injuries, indicates only 3 penalties, and in that event so small that it's an insult to the intelligence of any human being. I don't care, the poorest person in this country would recognize that $20 for the failure to report an injury is a totally inadequate fine.

Now, what is your evidence when you say that it's better everywhere else? This is the only one I know about. But you say the Mine Workers are in a great partnership with you. The fact is that they don't seem to be that happy. Certainly this letter doesn't indicate that, and the previous letter, both of which are in this record, their October 2, 1984, letter as well as the January 29, 1985, letter, and the attachments thereto. And you have many areas of this country where the metal, nonmetal mines often are not unionized. And, as a matter of fact, as I understand, up to 80 percent of the

sand, gravel, and stone mines have no unions, which would seem to suggest that there's nobody there prodding to do these audits.

And you're saying the—the basic issue is you're saying our record is good, and I'm saying, yes, but your records aren't complete.

And you're saying, well, yes, they are. I would like some evidence of that.

Mr. FORD. Sir, I don't have evidence one way or the other, whether this is unique or not. I prefer to think that that is a unique circumstance.

Senator METZENBAUM. Why do you prefer to think? You prefer to think—why do you think that? Why in one case? And it's one thing to prefer to think. I'd like to think I'm better looking than I am, but that isn't the way it is. And the fact is you can prefer to think something, but here is a case where you didn't do the job; 400 accidents, 3 penalties. And you'd prefer to think that's unique?

But what's the evidence?

Mr. FORD. I don't know what type of citations may have been written for the accidents that are involved in that lack of submissions.

But the underreporting of that carried the non-S.&S. And if I may address that, before I came, in the spring of 1981, the Federal Mine Safety and Health Review Commission issued a decision in the Cement Division of the Gypsum Co., that "significant and substantial" would have to carry evidence on the facts surrounding the citation that the hazard created was reasonably, could reasonably contribute to a reasonably serious injury.

And with that particular test, the number of citations——

Senator METZENBAUM. Could you hold for one second? There's an urgent call coming in.

[Pause.]

Senator METZENBAUM. Mr. Ford, I was called out to go to the floor. There's an urgent situation there, but at this moment I don't have to. So let's proceed if we can.

Mr. FORD. All right, sir. Again, I don't know what type of thread of underreporting has gone on in previous years, or in these. But that's constantly an effort to make sure that the reporting is critical.

One of the problems that we have is that we have continuously had a rider on our appropriations bill which prevents MSHA from enforcing education and training on surface mines—metal and nonmetal industry.

That inhibits communications, but it's been something that we've lived with. We've tried to get education and training across to the surface metal and nonmetal mines in other ways without violating that provision of the appropriations bill.

Senator METZENBAUM. Let me ask you, Mr. Ford, did you approve the Review Commission decision in 1981 that narrowed the criteria for which violations are significant and substantial under the act?

Mr. FORD. Sir, I wasn't here at the time. I didn't come until October. That was April 1981, and what we do as an administration is to conform with the latest interpretation of the law.

Senator METZENBAUM. But you promulgated a regulation to accept that decision, didn't you, after you came?

Mr. FORD. We were bound by—primarily, it was training. But we were bound by the determination by the Commission to follow the Commission's findings. Now, the training has been a continuous effort in acquainting all of the inspectors with what constitutes——

Senator METZENBAUM. Well, I'm not interested in the training part. I'm interested in the narrowing of the criteria of which violations are determined to be significant and substantial. Because as a result of that decision, by 1982, significant and substantial violations dropped from 82 percent to 21 percent of all violations.

Mr. FORD. In coal it has risen again to 57 percent. It's becoming—training is a very important element, so that all of the inspectors are aware of what constitutes a significant and substantial violation, and in metal, nonmetal, it's approximately 30 percent.

But that was the law of the land. We had to follow that.

Senator METZENBAUM. If you didn't agree with the Review Commission's regulation, certainly as the Commissioner you had the right to stand up to them and say to them that you disagree and send it back to them for further considerations, didn't you? You could have done that?

Mr. FORD. Not in the time period, by the time I came there. I would say, sir, that it has the same flavor of the OSHA Act, which differentiates between what is serious and what is not serious.

One of the problems in insuring that the credibility of the act is that small violations don't equate to the same thing as serious violations.

And I think that is an important distinction.

Senator METZENBAUM. Let me ask you, you set the $20 figure for violations?

Mr. FORD. Yes, sir.

Senator METZENBAUM. How did you come to that conclusion, knowing that $20 is just a good tip at the Stork Club these days—not even a good tip, but just a tip.

Mr. FORD. After we set the $20 figure, we got complaints from many in the industry that said that theirs average much less than that.

But the real reason for establishing a single penalty—No. 1, of course, the act requires a penalty for all violations determined. The other is that to save the time of the inspectors from going to conferences, before we set the $20 penalty, approximately 70 percent of all citations went to conference.

And those conferences were bickering about the amount of dollars and did not get into the health and safety issues. We changed, with the reorganization, and we have to consider the reorganization along with setting the $20 penalty.

Senator METZENBAUM. But that flat assessment, how does that comply with section 110.1 of the act which indicates that penalties are to be assessed on the basis of five criteria?

Mr. FORD. Well, emphasize the issue of degree, the attorneys said it was legal and moreover I say it was more appropriate because it gave the inspectors time to go back into the mines and do their job rather than attending conferences—70 percent of all citations used to be conferenced. That's down to about 8 to 10 percent now.

Senator METZENBAUM. What difference does it make, Mr. Ford, if there are less conferences if when you wind up penalizing them it doesn't mean anything? A penalty of $20 for an accident in a mine?

Mr. FORD. No, sir. Not for accidents. These are generally of the nature that do not fit the criteria of the Commission's decision that it has to contribute, reasonably contribute to a serious accident.

These cannot be serious incidences.

Senator METZENBAUM. Here's 400 your own inspectors said should have been reported. Here's 400 that your own inspectors said should have been reported, and there are only penalties in connection with 3 of them.

Mr. FORD. Well, three for underreporting, as I understand.

Senator METZENBAUM. Pardon?

Mr. FORD. With underreporting, is what you——

Senator METZENBAUM. That's right.

Mr. FORD. Believe me, I wasn't there at that time.

Senator METZENBAUM. This was in 1984. This was 1984.

Mr. FORD. I left in July 1983, sir. But the important thing is not to get a $20 penalty. The violation has to be abated, and abatement is the most important issue when it comes to any safety and health violation, abatement in a hurry. If it's not abated, it goes into the regular formula and can get into some much, much higher grades of penalties.

Abatement, I would like to emphasize, sir, respectfully, is the most important issue when violations are found.

Senator METZENBAUM. Mr. Ford, MSHA has a statutory requirement to perform a certain number of inspections, correct?

Mr. FORD. That's correct, sir.

Senator METZENBAUM. GAO has investigated MHSA and found only 62 percent of surface metal and nonmetal mines were inspected as required in 1984, a shortfall of 7,100 inspections.

Similar shortfalls existed under your tenure at MSHA. In fact, regular inspections are down more than 35 percent since 1980.

Now, as I understand the English language, mandatory means must. It is the law. Why aren't these mines being inspected? The law does not provide the Secretary with discretion to alter the minimum inspection requirement, is that correct?

Mr. FORD. Sir, I'd like, if I may, metal and nonmetal industries has had a turbulent period. You'll recall that in January 1982, Congress took away the authority of the Mine Safety and Health Administration to inspect surface sand and gravel, crushed stone, phosphate, and contract constructions on surface mines for 6 months.

That forced me, at that time, to RIF some 260 people. I tried to absorb as many as I could in the coal program, but we were prevented by Congress from inspecting mines. Now, OSHA assumed that jurisdiction, but did not have the resources to do it as pervasively as we could.

When we were given the authority back, the industry itself was in its doldrums. So we hired back, conservatively, to meet the workload that arose. Then the 5-cent tax passed on gasoline, which gave a shot-in-the-arm to the sand and gravel industry and to the crushed stone industry.

At the same time, the metal industry was staying in the doldrums, in cooper, in iron ore, in uranium, in silver, and those. So we had a maldistribution develop between the former metal industry and the burgeoning sand and gravel and crushed stone industry.

Now, it's my understanding that Assistant Secretary Zegeer is responding to the GAO report, that there are transfers being developed now to get inspectors out of the maldistribution created by the metal industry being in the doldrums at the present time, and the burgeoning, particularly in the Northeast, of the crushed stone industry, to get sufficient inspectors in those areas where the sand and gravel and crushed stone has increased to cover those mines.

It's true that that number—you might say that percentage—did develop. But we'd also say that MSHA is taking a look at its statistics. There are intermittent mines and seasonal mines, a number of them were down, these full-time operating mines, are no longer full-time operations. In fact, they find many mines now that are not in operation.

There are less mines, there are less individual operating mines now in both the metal and nonmetal and in coal than there had been, even though production in coal, particularly, has the highest in the last 4 years, with the lowest incident rate in the history of mining, has occurred.

Senator METZENBAUM. You made a pretty long speech. What did you say? What was the thrust of what you just said?

Mr. FORD. Well, just saying that in the metal, nonmetal industry, there's been a turbulence, partially——

Senator METZENBAUM. How does that account for the fact, turbulence or no turbulence, how does that account for the fact that you're not living up to your statutory obligation according to GAO?

Mr. FORD. It's my understanding that Assistant Secretary Zegeer has made changes that will bring 85 percent, will get to the 85 percent area by the third quarter of this year in the metal, nonmetal.

Senator METZENBAUM. We're talking about 100 percent. That's what the law calls for.

Mr. FORD. Well, another issue which anyone that has been involved in mining realizes is that particularly in the West long distances to the mines from the field offices, they get—and, of course, cannot give prior notice that, as the act requires, prior notice of inspection—they have thousands, literally thousands of calls on mines, and find the mines not operating, not operating at all.

Senator METZENBAUM. I understand the distances. But the Senate in 1983 and 1984 invited you to ask for more money if needed for mandatory inspections. Instead, you continued to recommend budget cuts each year. And how can you justify telling the Senate that a projected decline in metal and nonmetal inspections from 1983-84 was attributable to legislative proposals to the Mine Act which would provide secretarial discretion in determining the minimum number of mandatory inspections at surface mines. You told both the House and Senate in 1982 that your fiscal 1983 appropriation request contained adequate resources to carry out the provisions of the Mine Act relating to surface mining activities. In 1983 you told the House your fiscal year 1984 appropriation request would in no way lessen the agency's ability to effectively carry out

the mandates of the 1977 act. And we now know, and you say there are long distances and there are problems. We know that that is not the case, that it hasn't been done as you indicated, and you were seriously misleading the Congress, and now you're telling us what a great challenge it is.

But you have a statutory obligation that you haven't lived up to, and now you're up here for confirmation, asking us to confirm you for this position. And I'm saying to you why should we confirm somebody for a position when he hasn't lived up to his obligations under the law heretofore?

Mr. FORD. Sir, we have attempted to, as I say, it really doesn't—it's difficult to ask for a budget that doesn't anticipate the fact that mines are closed when you call on them. It's not rational to do so.

I would still say that we had sufficient funds during my tenure to perform those activities.

Senator METZENBAUM. I think my distinguished colleague from Illinois has some questions, and so I would yield to him at this point.

Senator SIMON. Yes; and I shall be very brief, and unfortunately, I have another meeting that I have to get to right away.

Senator METZENBAUM. Mr. Ford, and Senator Simon, I must be called to the floor. I will try to come back. If not, I will recess the hearing at the conclusion of Senator Simon's remarks, either until I can get back, and I'll notify my staff, or if not we'll have to continue this hearing to another day. But apparently I must be at the floor and there is nobody else to do what has to be done.

Senator SIMON. Mr. Ford, I remember when the Secretary of Labor, Ray Donovan, testified before the House committee, and I don't remember the year, but I think it was 1982, and what we saw were the number of inspections going down, and the number of fatalities and injuries going up.

And I remember asking the Secretary before the House committee—I was then a Member of the House—whether there wasn't a relationship between the two. And he said, apparently there is—something like that. That's not exactly the exact quote.

I'm from coal mining territory in deep southern Illinois. I am very much concerned that MSHA really does the job that needs to be done. And my impression is that too often it's just been playing footsie with the industry.

Let me just give an example. In the *Pontiki* and *United States Steel* cases, March and May 1984, the judge found that the Solicitor of Labor and MSHA were openly violating the statutory prohibition against advance notice of compliance inspections.

Mr. FORD. I'm not aware of that, sir.

Senator SIMON. That is not a common practice then?

Mr. FORD. It's absolutely against the law and the rules and regulations of MSHA that any advance notice for an inspection be given.

Senator SIMON. And you insisted on that?

Mr. FORD. I did while I was Assistant Secretary.

Senator SIMON. And if you are confirmed, you're going to insist on it?

Mr. FORD. To the Commission, I would certainly, based upon any facts that that was done, that would be intolerable.

Senator SIMON. Yes. Second, I'm concerned, there has been—one of the judges who has really stood out has been Judge Joseph Kennedy, who has really protected the rights and the safety of workers.

And I am concerned that whenever we find a judge that really does what the law says was supposed to do, all of a sudden that judge finds he's in all kinds of trouble.

Do you have any comments?

Mr. FORD. No, sir. I don't. I don't understand that question.

Senator SIMON. Are you familiar with Judge Kennedy?

Mr. FORD. I have—yes, I'm aware. I read his decisions when I was over at MSHA of the cases that have gone before him. But I have no opinion, sir.

I understand there are 11 very fine administrative law judges at the Commission.

Senator SIMON. At this point I'd like to place in the record a letter from me to Charles A. Bowsher, Comptroller General, dated October 8, 1985, which deals with the situation involving Judge Kennedy.

[The letter referred to follows:]

COPY

October 8, 1985

Hon. Charles A. Bowsher
Comptroller General
U.S. General Accounting Office
Washington, DC 20540

Dear Mr. Bowsher:

I am writing to request an immediate investigation of a situation surrounding Administrative Law Judge, Joseph B. Kennedy, the Federal Mine Safety and Health Review Commission, and subsequent civil litigation which, in my view, threatens the independence of administrative law judges. In this instance, because of Judge Kennedy's candor and tenacity in mine safety cases, the health and safety of thousands of miners may also be threatened.

I would appreciate your reviewing the factual situation leading up to the "Rule 82 inquiry" (discussed below), and the legal authority and precedent for such an inquiry by the Commission. An opinion from you on the legality of such a proceeding would be helpful. I thought some additional facts might be useful. They are set out below.

Since 1975, Judge Kennedy has been a critic of the lackluster performance of the various agencies which are responsible for the enforcement of the nation's coal mine health and safety laws. His refusal to abide by the Department of the Interior's lax enforcement policy earned him a reprimand that Attorney General Levi ordered expunged from his record in 1977. Criticism of the ineffective enforcement effort under the Carter administration resulted in a determination that the Judge was "too enforcement minded" to overcome industry opposition to his appointment as chairman of the newly created Federal Mine Safety and Health Review Commission in 1978.

From 1979 to 1981, as the trial judge assigned to the cases that stemmed from the Scotia mine disaster, Judge Kennedy stoutly resisted efforts by Blue Diamond Coal Company, the Office of the Solicitor of the Labor Department, and the Criminal Division of the Department of Justice to stay or dismiss the civil penalty aspect of the cases because of a pending grand jury investigation. Judge Kennedy also successfully rejected the determined efforts of Blue Diamond to remove him from the Scotia cases, despite the Solicitor's refusal to oppose Blue Diamond or to support the Judge.

In a series of five published decisions in 1984, Judge Kennedy warned that the present Administration's "cooperative enforcement" policy had engendered a dangerous disrespect for the law, had trivialized its enforcement and had undermined the morale of the entire Mine Safety and Health Administration (MSHA). These concerns were tragically vindicated at the Wilberg Mine in Orangeville, Utah, on December 19, 1984. The Judge's decision graphically detailed the manner in which the "cooperative enforcement" program had resulted in an institutional malaise that has crippled the enforcement of the coal mine health and safety laws. In the Belcher Mine case, the Judge took the Assistant Solicitor for the withholding of evidence relevant to the culpability of an operator for an imminent danger violation. His decisions in Bethlehem Mines in January and in United States Steel Mining Co. in August 1984 traced the origins of the "cooperative enforcement" program to the Administration's efforts to administratively deregulate and emasculate effective enforcement of the Mine Act. In decisions issued in March and May 1984 in the Pontiki and U.S. Steel cases, the Judge found that the Solicitor of Labor and MSHA were openly violating the statutory prohibition against advance notice of compliance inspections.

In May 1984, charges of MSHA incompetence and corruption that arose out of Judge Kennedy's decision in the Pontiki and U.S. Steel cases were referred to the Attorney General of the United States. As a result, in October 1984, the United States Attorney for the Eastern District of Kentucky (Lexington) opened an investigation into allegations of payoffs, kickbacks, silent partners and other official corruption by MSHA personnel. Cable News Network broadcast nationally in August 1984 a documentary entitled Mine Safety, Death and the Bureauracy. This documentary painted a disturbing picture of laxity, incompetence and corruption in MSHA's enforcement program that allegedly led to the criminal endangerment of hundreds of miners and the death and injury of many others.

The fallout from Judge Kennedy's decisions received attention in the print media throughout the nation. Great pressure, we believe, was brought to bear on the Commission to attempt to silence the Judge. From a generally neutral attitude, the Commission, as is shown below, became openly hostile -- of opening ex parte investigations into charges by the Solicitor of Labor which appeared to be designed to prevent the Judge from exercising the decisional independence guaranteed his office by law. Ultimately, the Commission chose to defy its position as an independent adjudicatory agency and to issue and disseminate throughout the country formal decisions on these charges without affording the Judge the most minimal of due process protections. The ex parte punishments imposed by

these decisions have caused irreparable injustice to Judge Kennedy -- an injustice which at this stage only the Legislative Branch can seek to rectify.

Finally, at the same time Judge Kennedy was involved in the proceedings which had been initiated by the Commission, he was sued in federal district court by an attorney in the Solicitor of Labor's Office. He then sought but was denied representation by the Department of Justice -- a denial which had been urged by the Commission and which, of course, forced him to retain private counsel to defend against the suit's unsupported charges.

It has, to say the least, been a difficult time for the Judge who has not, and will not, step back from his commitment to the fair and vigorous enforcement of the law which Congress enacted to safeguard the nation's coal miners.

I have additional information, made available to me by Judge Kennedy. If your staff would like to review this material, or if you have any questions, please have them contact Bud Blakey on 224-2152.

Cordially,

Paul Simon
United States Senator

PS/sp

Senator SIMON. Now, I guess I should ask my staff this, but what is the relationship between the Commission and MSHA?

Mr. FORD. To begin with, the Commission is an independent body, independent of the Department of Labor, independent of the Mine Safety and Health Administration.

And the administrative law judges are employed by the Commission and assign cases as they are referred to the Commission for hearing in the field.

Senator SIMON. And if you are approved, you're not going to say this judge is enforcing the law stronger than I like and we're going to put him out in left field somewhere?

Mr. FORD. Sir, I just don't know what the circumstances are that they're talking about. I always intend to be fair, and I have always been, I think, in personnel practices.

Senator SIMON. I thank you. I think we will stand in recess now.

We'll stand in recess. There's a possibility that Senators Hatch or Metzenbaum will be back. In fairness to you, Mr. Ford, we'll try and let you know very quickly what the situation is so we don't just tie you up here, as well as the others who are interested.

[A short recess was taken.]

Senator METZENBAUM. I apologize to you, Mr. Ford, but I had no choice in the matter.

Mr. FORD. That's no problem, sir.

Senator METZENBAUM. Sometimes there are priorities that call you to be elsewhere.

When did you first know, after you had made the statement to the Congress that there were adequate resources to carry out the provisions of the Mine Act, and related surface mining activities, and that your appropriation requests for 1984 wouldn't lessen the agency's ability to do their job? When did you first know that MSHA was failing to meet its inspection requirements under the law?

Mr. FORD. Senator, I left MSHA in July 1983, and became Under Secretary. Until, very frankly, until I got the audit report, I was unaware of the percentage shortfall on the inspections.

Senator METZENBAUM. When you were serving at MSHA, was the agency's planning system key to the number of required inspections?

Mr. FORD. That was obviously a very strong consideration, sir. Also to the planning needs for spot inspections for all the other inspection events which far exceed the number of mandatory inspections, even at 100 percent.

But I'd like to point out that not in the previous administration either was the 100 percent mandatory inspections realized, and I'm sure for basically many of the same reasons.

Senator METZENBAUM. Well, the GAO stated, "yet many of these plans were approved by MSHA headquarters, although they specifically planned for shortfalls. MSHA's planning system is based on the number of inspections and the time necessary to inspect, rather than the required number of inspections. Further, MSHA does not hold its managers accountable for performing required inspections in their performance standards." Does that not concern you and do you not feel that you're failing to live up to your obligations under the law?

S. HRG. 99-418

NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

MARSHALL B. BABSON, OF CONNECTICUT, AND WILFORD W. JOHANSEN, OF CALIFORNIA, TO BE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

MAY 8, 1985

Printed for the use of the Committee on Labor and Human Resources

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NOMINATIONS

WEDNESDAY, MAY 8, 1985

UNITED STATES SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:38 a.m., in room SD-430, Dirksen Senate Office Building, Hon. Don Nickles presiding.

Present: Senators Hatch, Nickles, Grassley, Pell, and Dodd.

Senator GRASSLEY. Mr. Chairman, could I ask unanimous consent to put a statement in the record in regard to the hearing of these nominees that are——

The CHAIRMAN. Without objection so ordered.

Senator GRASSLEY. Senator Nickles, as chairman, can I make sure the request that was just approved by Senator Hatch in regard to a statement on the hearing that we are going to have on these nominees for the NLRB—I would like to insert that into the record.

Senator NICKLES. We will be happy to include your statement in the record.

Senator GRASSLEY. I may have some questions I will want to submit in writing, too.

Senator NICKLES. Certainly, Senator, and we appreciate your interest.

Mr. Johansen and Mr. Babson, if you will join us at the table.

First, I will enter into the record a statement on behalf of Senator Hatch, chairman of the full committee, as well as Senator Grassley's statement concerning the two nominations for the National Labor Relations Board, Mr. Wilford Johansen of California, and Mr. Marshall Babson of Connecticut. Their statements will be entered in full at this point in the record.

[The statements of Senators Hatch and Grassley follow:]

OPENING STATEMENT OF SENATOR HATCH

Mr. Chairman, today the committee is considering two nominations to the National Labor Relations Board—Mr. Wilford Johansen of California and Mr. Marshall Babson of Connecticut.

The National Labor Relations Board is a five-member, quasi-adjudicatory agency responsible for enforcing the National Labor Relations Act. Its mandate is twofold: First, to oversee representation cases by which employees decide whether to be represented by a union; second, the Board adjudicates unfair labor practice cases brought against employers and unions.

This year the agency reached an historic milestone; 50 years ago, in 1935, Congress enacted the Wagner Act, which established the NLRB. Over this half century, the act has undergone major revision on two occasions in 1947, with the Taft-Hartley Act, and in 1959, with the Landrum-Griffin Act. Yet, the Board has maintained a consistent record of efficiency and integrity.

Of course, the Board has not been beyond criticism. It has been plagued at times, and especially in recent years, with case backlogs and concomitant delays. But then the Board has not enjoyed a full complement of members since August 1983. Moreover, I think some of this criticism against the Board has not been entirely objective. It ignores, for example, that two-thirds of all unfair labor practice charges filed with the NLRB regional offices are found not to have merit. Of the remaining one-third, over 90 percent are settled between the parties before any complaint issued by the regional office. Thus, only a relatively small number of cases ever reach the Board itself for resolution. Still, these cases are important and are deserving of speedy resolution as any other dispute. I am hopeful that the committee will act expeditiously in recommending confirmation of these nominations. To tie them up unnecessarily in committee will ultimately work to the disadvantage of the working men and women of this country who enjoy the protections of the National Labor Relations Act.

I have had an opportunity before today to meet Mr. Johansen and Mr. Babson personally. I can say unequivocally that the President has made a fine selection in these gentleman. They are both men of integrity and intelligence, who will bring a wealth of professional experience to the Board. I know that they will apply the law fairly and evenhandedly.

[The prepared statement of Senator Grassley follows:]

Statement of Senator Grassley at Labor Committee hearing on the nominees to the National Labor Relations Board
May 8, 1985

MR. CHAIRMAN, FOR 10 YEARS, BETWEEN THE YEARS 1961 AND 1971, WHEN I WORKED AT THE WATERLOO REGISTER COMPANY IN CEDAR FALLS, IOWA, I WAS A VOLUNTARY MEMBER OF A LABOR UNION, THE INTERNATIONAL ASSOCIATION OF MACHINISTS. WHEN THE UNION WENT OUT ON STRIKE, I WENT OUT ON STRIKE; IN FACT, I VOTED IN FAVOR OF THE MOTION TO STRIKE AT THE UNION MEETING. I WELL REMEMBER HOW MUCH I VALUED, AT THAT TIME, THE ADVANTAGES I ENJOYED BECAUSE I WAS REPRESENTED BY A UNION THAT COULD EXERT REAL POWER ON MY BEHALF AND ON BEHALF OF MY FELLOW EMPLOYEES IN DISPUTES WITH MANAGEMENT. I CONTINUE TO BELIEVE THAT COLLECTIVE BARGAINING AND UNION REPRESENTATION PLAY AN IMPORTANT ROLE IN SAFEGUARDING THE RIGHTS OF WORKERS.

AS A FORMER UNION MEMBER I UNDERSTAND VERY WELL THE IMPORTANCE OF THE NATIONAL LABOR RELATIONS BOARD. THE NLRB IS CHARGED WITH REGULATING THE ACTIVITIES OF EMPLOYERS AND LABOR UNIONS SO AS TO HELP ENSURE THAT THE FUNDAMENTAL ECONOMIC RIGHTS OF WORKERS ARE PROTECTED. IN ORDER TO ACCOMPLISH THAT GOAL, THE NLRB SAFEGUARDS EMPLOYEES' RIGHTS TO ORGANIZE, HOLDS ELECTIONS TO DETERMINE WHETHER WORKERS WANT UNIONS AS THEIR BARGAINING REPRESENTATIVES, AND PREVENTS AND REMEDIES UNFAIR LABOR PRACTICES BY EMPLOYERS AND LABOR ORGANIZATIONS OR THEIR AGENTS.

I HAVE ALSO COME TO REALIZE, MR. CHAIRMAN, THAT THE NLRB MUST PERFORM A DELICATE BALANCING ACT, FOR IT IS RESPONSIBLE NOT ONLY FOR PROTECTING THE RIGHTS OF WORKERS FROM INFRINGEMENT BY EMPLOYERS, BUT ALSO FOR PROTECTING THE RIGHTS OF WORKERS FROM INFRINGEMENT BY LABOR UNIONS AND THE RIGHTS OF EMPLOYERS FROM INFRINGEMENT BY WORKERS AND LABOR UNIONS.

THE BOTTOM LINE IS THAT THE NLRB CANNOT ALLOW ITSELF TO BECOME AN ADVOCATE FOR ONE GROUP OVER ALL THE OTHERS. IT MUST BE PREPARED TO TAKE ACTION AGAINST EMPLOYERS WHO WOULD DENY THE RIGHT TO BARGAIN COLLECTIVELY AND TO BE REPRESENTED BY A UNIONS TO THEIR WORKERS. T MUST ALSO BE PREPARED TO TAKE ACTION AGAINST LABOR UNIONS WHEN THEY RESORT TO UNFAIR LABOR PRACTICES TO EXTRACT CONCESSIONS FROM EMPLOYERS. THE NLRB MUST EVEN BE PREPARED TO TAKE ACTION AGAINST LABOR UNIONS WHEN THEY RESTRAIN AND COERCE EMPLOYEES IN THE EXERCISE OF RIGHTS GUARANTEED BY THE NATIONAL LABOR RELATIONS ACT, PARTICULARLY THE RIGHT TO REFRAIN FROM CERTAIN UNION SPONSORED ACTIVITIES.

MR. CHAIRMAN, IN ADDITION TO ITS "NORMAL" CHALLENGES, THE NLRB IS FACING PERHAPS THE LARGEST CASE BACKLOG SINCE ITS INCEPTION. I HOPE THE COMMITTEE WILL CONSIDER THE NOMINATIONS OF MR. BABSON AND MR. JOHANSEN CAREFULLY BUT WITHOUT UNDUE DELAY. IT IS IN THE BEST INTERESTS OF AMERICAN WORKERS AND EMPLOYERS TO HAVE A FULLY FUNCTIONING NLRB, COMPOSED OF CAPABLE AND IMPARTIAL PUBLIC SERVANTS.

Senator NICKLES. Gentlemen, we welcome you.

Senator Pell, do you have a statement?

Senator PELL. Thank you, Mr. Chairman. I have an opening statement welcoming the two nominees to the Board. I look forward to hearing their views and, if I am not here, to reading their views.

I believe that the role of the Board is a fair one and these are very important appointments, and ask that the balance of my statement be inserted into the record as if read. I will also leave some questions which I would like to have put to the nominees in writing.

Senator NICKLES. Certainly, we will be happy to. We will submit those questions to the nominees and request a prompt answer of those, if possible.

[Senator Pell's opening statement follows:]

OPENING STATEMENT OF SENATOR PELL

Senator PELL. I would like to welcome the nominees to this committee hearing.

Throughout its history, the National Labor Relations Board received the respect of both industry and labor, employer and employee. Recently, however, the Board has become the subject of controversy and some doubt as to its role in resolving labor disputes has been raised.

I would like to see that respect in the Board, in its personnel and in its decisions, restored. As a nation, we need to ensure that disputes between labor and management are resolved, and resolved fairly to ensure stability in the private sector.

I look forward to hearing the views of these nominees and to learn what they believe the role of the Board should be in intervening in these matters; and what they believe their role as a Board member, if confirmed, will be.

Senator NICKLES. Senator Dodd, did you have——

Senator PELL. Forgive me. I expect them to answer them before we vote on them in the committee.

Senator NICKLES. Certainly.

Senator PELL. Thank you.

Senator NICKLES. Senator Dodd, do you have any comments?

Senator DODD. Well, Mr. Chairman, I am delighted to welcome Marshall Babson from Connecticut here this morning, along with his family, as a nominee for the NLRB. As you pointed out in your introduction of him, he is from Connecticut, practices with a very distinguished law firm, Wiggin & Dana, in New Haven, CT.

He is a graduate of Columbia Law School and the University of Pennsylvania, and has worked in the labor law field virtually his entire professional career, if I am not mistaken, or 95 percent, at least, in that arena.

He has earned a reputation of being a very competent and thorough lawyer. He has represented, I think, almost exclusively employers before the NLRB, and EEOC, and OSHA, and so forth. But I must point out to you, Mr. Chairman, that a number of people from our local labor unions in the New Haven area called me specifically to commend Mr. Babson for our approval.

He has met, I know, in this city something that I do not think has been done that often, frankly, by nominees in this administration—spent, I think, a lengthy session with people from the AFL-CIO at his request to go over and talk with them, to discuss whatever differences there may be.

And I think everyone who had a chance to talk with him, while they did not all agree with him—and our reason for existing here is not to necessarily find out whether everyone agrees with him or not. But I think they found an individual who is highly competent and knows what he is talking about.

I am delighted to welcome him here today. I had a chance to talk with him myself and I intend to support his nomination, and hope that we can deal with it expeditiously.

So I welcome you, Mr. Babson, and welcome your family as well to this hearing this morning. I will be anxious to hear your testimony and that of your seatmate there as well. I thank you for coming.

Thank you, Mr. Chairman.

Senator NICKLES. Senator Dodd, we appreciate your comments and your statements on behalf of Mr. Babson.

I would like to include in the record a statement on behalf of Senator Pete Wilson in support of Mr. Wilford Johansen. I understand that Senator Wilson is ill today and will not be able to be with us, but his statement will be included in the record at this point.

[The following was received for the record:]

REMARKS BY THE HONORABLE PETE WILSON

MR. CHAIRMAN,

I AM PLEASED TO INTRODUCE TO YOU A DISTINGUISHED CALIFORNIAN, WILFORD "BUD" JOHANSEN, FOR CONFIRMATION TO THE POSITION OF NATIONAL LABOR RELATIONS BOARD MEMBER.

BUD JOHANSEN COMES TO THAT AGENCY WITH A UNIQUE GRASP OF THE BOARD'S HISTORY AND PROCEDURES. HE HAS SERVED AS A BEGINNING ATTORNEY AND MOVED THROUGH THE RANKS TO THE POSITION OF ATTORNEY ADVISOR AT THE WASHINGTON OFFICES; MOST RECENTLY HE HEADED THE INTERESTING REGION 21 OFFICE. HE EXPEDITIOUSLY HANDLED COMPLEX CASES DEALING WITH THE BUILDING AND CONSTRUCTION TRADES AS WELL AS THE MARITIME INDUSTRY. BUD WAS KNOWN FOR HIS EVEN HANDED APPROACH; HE NEVER RUSHED TO JUDGEMENT, AND YET HE ALWAYS MAINTAINED HIGH PRODUCTIVITY FIGURES IN HIS OFFICE. AS A PRESIDENTIAL APPOINTEE TO THE POSITION OF ACTING GENERAL COUNSEL, BUD IMPLEMENTED A NEW AND VERY SUCCESSFUL TRAINING PROGRAM FOR NLRB FIELD ATTORNEYS.

BUD AND HIS WIFE, PATRICIA, ARE VERY MUCH INVOLVED IN COMMUNITY SERVICE, WITH SPECIAL INTEREST IN THE AMERICAN CANCER SOCIETY FUND RAISING ACTIVITIES. THIS YEAR THEY WILL CHAIR AN AUCTION RAISING APPROXIMATELY $70,000. THEY HAVE TWO SONS, ERIC, CURRENTLY ATTENDING HARBOR COLLEGE MAJORING IN JOURNALISM, AND EVAN, A GRADUATE OF THE UNIVERSITY OF DENVER, WITH A MAJOR IN HOTEL AND RESTAURANT MANAGEMENT.

MR. CHAIRMAN, WILFORD "BUD" JOHANSEN BRINGS A SPECIAL PROFESSIONALISM TO THIS POSITION WHICH WILL SERVE THE AGENCY, THE PRESIDENT AND THE NATION WELL. I LOOK FORWARD TO HIS SUCCESSFUL TENURE.

Senator NICKLES. Mr. Babson, would you care to proceed?

STATEMENT OF MARSHALL B. BABSON, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD, AND WILFORD W. JOHANSEN, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Mr. BABSON. Thank you very much, Senator Nickles. First, I would just like to thank the Senators very much for the opportunity to appear here this morning. I would particularly like to thank you, Senator Dodd, for your kind remarks, and I am very proud and pleased to be here.

I have a very brief statement which I have prepared which I would like to read, if that is all right, Senator Nickles. I am very honored and proud to appear before you today as one of President Reagan's nominees to the National Labor Relations Board.

I had the opportunity to attend my first representation hearing before the National Labor Relations Board almost 12 years ago when I clerked as a first year law student in New York City. Since that time, I have devoted the better part of my professional career to specializing in labor and employment-related matters.

It has been a privilege for me to represent many clients in matters arising under the National Labor Relations Act in labor negotiations, arbitrations, employment discrimination cases and related employment matters during my career, and I am very honored to have the additional privilege of appearing before this committee as a nominee to the NLRB.

This year is the 50th anniversary of the National Labor Relations Board. No one can doubt the importance of the National Labor Relations Act to employees, to unions, and to employers.

Although I have acted as an advocate before the Board during the past 10 years, I recognize that my role as a member of the Board is to be a fair and impartial adjudicator of the many important issues which come before the agency.

In this anniversary year, it is particularly appropriate that we rededicate ourselves to the policies and principles of the act to encourage the practice and procedure of collective bargaining by protecting the rights to full freedom of association and free choice, self-organization, and the designation of collective bargaining representatives.

I pledge to you my commitment to these principles and my commitment to be a fair and impartial member of the Board. I shall endeavor to work to the best of my abilities and in the highest traditions of my profession.

Thank you.

Senator NICKLES. Thank you very much, Mr. Babson.

Senator Dodd, if you do not have any objection, I will ask Mr. Johansen to make his statement as well.

Senator DODD. Absolutely.

Senator NICKLES. Mr. Johansen.

Mr. JOHANSEN. Thank you. Mr Chairman and members of the committee, it is an honor and a privilege to appear before you today as one of President Reagan's nominees to be a member of the National Labor Relations Board. I wish to express my appreciation

to the Labor and Human Resources Committee for scheduling a hearing on my behalf and affording me the opportunity to address you.

I have submitted a biographical statement to the committee. I have spent 26 years as an attorney with the National Labor Relations Board. As a career Board employee, I am especially honored by the President's nomination.

My fascination with labor law began in law school. Upon graduation, I applied for an attorney position with the National Labor Relations Board and was hired as a field attorney for the Los Angeles regional office, region 21. After a tour of duty as a trial attorney in the regional office, I transferred to the general counsel's staff in Washington, DC. I was a deputy assistant general counsel and served as liaison between the general counsel and the regional offices.

In 1971, I was named as regional director in Los Angeles, region 21, and I have served in that capacity since that time. Last year, the President designated me as acting general counsel of the Board, and I held that position for approximately 6 months.

As a regional director, I am responsible for administering and enforcing the National Labor Relations Act, as amended, on behalf of the Board and the general counsel in the southern California area.

As you know, the purpose of the act is to serve the public interest by eliminating interruptions of the free flow of commerce caused by industrial strife. The act is one of the most significant and controversial Federal statutes ever passed by Congress.

Because the act is so important to the country, to labor and management, and to the individuals whose rights it protects, the Board administers the act with complete fairness, objectivity, and unquestioned neutrality. This is the mandate of Congress.

I have always been proud of the Board and of the fact that I work for an agency of the U.S. Government that did indeed perform its mission as Congress intended. Congress left substantial discretion to the Board, and there have been, and always will be, opposing views as to the proper interpretation of the act by the Board and the courts.

During my tenure, the Board has been variously viewed as antimanagement or antilabor. In fact, every decision reached by the agency through its directors, the general counsel, and the Board is antisomeone.

If Board decisions satisfied all the parties, the significance of the act as a force for labor-management stability would be destroyed and the intent of Congress violated.

In the end analysis, however, the rights of employees are protected and the environment of labor-management relations is governed by law. I have a great deal of respect for that process.

In the cases in which I have been involved, I have always strived to bridge and balance the strong contending views of the parties, to be objective, to insure that the policies of the act are preserved and, above all, to consider all parties' views fairly and impartially. I pledge to you that if confirmed, I will continue to perform my duties as a Board member in the same consistent, impartial, and open manner.

I understand the responsibilities assigned to the Board and I look forward to meeting them. I deeply believe that our industrial peace and stability are well served by this law and I am dedicated to its purpose.

Again, I appreciate the opportunity to appear and speak to you today and I look forward to working with you in the future. I welcome the opportunity to answer any questions you may have pertaining to my nomination.

Thank you.

Senator NICKLES. Thank you very much, Mr. Johansen.

Mr. Babson, I have a few questions for both of you. Other Senators also have additional questions and we would appreciate it if both of you would answer them as soon as possible to expedite your confirmation by the Senate.

Mr. Babson, shortly after your nomination was announced, we heard from some quarters of organized labor that you were not an ordinary labor law practitioner, but rather a labor-management consultant; that is, one who spends a substantial amount of time helping employers resist organizing campaigns.

Is there any truth to that characterization? Could you tell the committee a little more about your labor practice?

Mr. BABSON. Such a characterization would be inaccurate, Senator Nickles. Since graduating from law school in 1975, I have spent all of my time providing legal advice to clients with labor problems, both problems that arise under the National Labor Relations Act and other employment-related issues.

I and my firm have never engaged in so-called persuader activities. I have never given speeches to employees. We do not publish or prepare documents which are to be circulated to employees, and so forth.

Our role has been that of legal adviser, representing clients before the various administrative agencies, including the National Labor Relations Board, and giving them counsel, hopefully, before it may become necessary to appear before such an agency.

Senator NICKLES. Have you ever filed reports with the Department of Labor that would be required under section 203(b) of Landrum-Griffin?

Mr. BABSON. No, sir.

Senator NICKLES. In a similar vein, a question has been raised whether you can be an impartial member of the Board, given your exclusive representation of employers over the past 10 years.

Would you care to comment on that?

Mr. BABSON. I would say this, Senator, as I said in my opening remarks: This is a great honor for me to have been nominated by the President. I have spent my entire professional career appearing before the Board. I have a great deal of respect for the agency and the process.

I realize clearly that I am not being asked to go to the Board as an advocate. I have spent the better part of my life being trained to be a legal professional and I pledge to you and this committee that I shall not be an advocate, but shall enforce, so far as I am able, the intent of Congress with regard to the National Labor Relations Act.

Senator NICKLES. Two years ago, the Board voted to take a more active role in overseeing the enforcement activities of the general counsel both in respect to work product and personnel.

How familiar with the details of the Board's actions and the new arrangement which has been reached with the general counsel are you?

Mr. BABSON. I am not familiar with the details. I am generally familiar with the issue or issues involved, and if I am confirmed, I obviously want to address whatever questions arise.

I will say that I am keenly aware of the separation of roles of the general counsel and the Board as embodied in the Taft-Hartley amendments, and I again pledge to this committee my intention to give full effect to Congress' desires in that statute.

Senator NICKLES. Have you discussed this, by any chance, with members of the Board or the general counsel?

Mr. BABSON. I have not discussed the issues involved in the separation question.

Senator NICKLES. I think, of course, that the central concern raised by this matter is whether the general counsel can recognize the legitimate interests of the Board in having its views correctly advocated in enforcement proceedings without compromising the independence of the general counsel as prosecutor.

Can you commit to the committee that should further action be proposed in this matter that you will resolve it in such a way that preserves the independence of the office of general counsel as a statutory responsibility?

Mr. BABSON. Absolutely.

Senator NICKLES. Thank you very much.

Mr. Johansen, How many years of experience have you had in working with——

Mr. JOHANSEN. About 26.

Senator NICKLES. About 26?

Mr. JOHANSEN. Yes, 26, 27.

Senator NICKLES. You have been regional director of the Los Angeles office since 1971?

Mr. JOHANSEN. That is right.

Senator NICKLES. How many people work in the Los Angeles office?

Mr. JOHANSEN. Right now, we have about 62.

Senator NICKLES. What percentage of those are, say, attorneys?

Mr. JOHANSEN. Well, let us see, about 35 attorneys, probably, and field examiners, and then clerical staff.

Senator NICKLES. I would also like to ask you the same question which I asked Mr. Babson on the relationship between the Board and the general counsel. Last year, you were privileged to serve as acting general counsel for a little less than 1 year?

Mr. JOHANSEN. Well, it was about 6 months, from the end of April until around the middle of October.

Senator NICKLES. Were you satisfied that the arrangement which had been worked out between the Board and the previous general counsel did not impair the independence of the general counsel's office?

Mr. JOHANSEN. Yes; it did not.

Senator NICKLES. Since your nomination, have you discussed the matter with any members of the Board?

Mr. JOHANSEN. No, I have not.

Senator NICKLES. As I indicated to Mr. Babson, I believe, the critical issue is in preserving the independence of the general counsel as prosecutor while recognizing the legitimate concerns of the Board in having its position properly advocated in the courts.

Can you assure the committee that should further action be proposed in this matter you will resolve it in such a way that preserves the independence of the office of general counsel?

Mr. JOHANSEN. Yes; because the statute does not work without the general counsel being independent, so they have to be independent.

Senator NICKLES. Both of you are well aware of the backlog and a lot of the criticisms; I am assuming you are aware of the criticisms that have been issued from different fronts, both in the House and the Senate, on the backlog of the Board.

I think part of the backlog has been because of the fact that we have not had a full complement on the Board. I am hopeful that you will be speedily confirmed. Both of you have experience in the field and I hope you can hit the ground running and work diligently with other members of the Board and hopefully get a lot of these cases resolved that have been backlogged for some time.

Do you think that is possible?

Mr. BABSON. Well, as far as I am concerned, Senator Nickles, I am well aware of the problem of the backlog. I think that there is a myth among some in the profession that such a backlog serves the interests of employers. It clearly does not. It is a shortsighted view.

This is an extraordinarily important agency serving an important purpose, and if justice is going to be denied because of delay, it is going to work to the disadvantage of everyone. I pledge to work as hard as I can to eliminate so far as possible, delay in the Board's processes.

Senator NICKLES. Mr. Johansen?

Mr. JOHANSEN. Yes; I would certainly do whatever I can and apply whatever expertise I have to help eliminate that backlog.

Senator NICKLES. As acting general counsel, how large is that backlog?

Mr. JOHANSEN. Well, it is the Board's backlog and the general counsel, of course, is independent of that. But as I understand it, the Board has made some effort and gotten rid of some of the backlog. I do not know the exact figure at this point, but I am sure that we can help eliminate it.

Senator NICKLES. The general counsel is back there grinning at that question when I said "acting."

What would be the terms of your office? The seat that you are filling would be——

Mr. JOHANSEN. Three-and-a-half years; August 1988, I believe it is.

Senator NICKLES. August 1988?

Mr. JOHANSEN. Yes. I am taking the Jenkins seat, the Republican seat.

Senator NICKLES. Mr. Babson.

Mr. BABSON. The seat that I have been nominated to fill expires in December 1989; it is Mr. Zimmerman's seat.

Senator NICKLES. December 1989?

Mr. BABSON. Yes, sir.

Senator NICKLES. Mr. Johansen, you are a Republican?

Mr. JOHANSEN. Yes.

Senator NICKLES. Mr. Babson, a Democrat?

Mr. BABSON. That is correct.

Senator NICKLES. So the makeup of the Board would be, what, 3 to 2?

Mr. JOHANSEN. That is right.

Senator NICKLES. Gentlemen, I appreciate your cooperation before the committee. I also appreciate the fact that my colleagues have left and we were able to conclude this hearing as rapidly as we have.

As mentioned before, I think there may be some additional questions by some of our colleagues. I would appreciate it if you would cooperate and try and get those questions answered as soon as possible. I think it would expedite it moving through the committee and also through the full Senate.

Thank you very much.

Mr. BABSON. Thank you, Senator.

Mr. JOHANSEN. Thank you.

Senator NICKLES. The committee is adjourned.

[Whereupon, at 10 a.m., the committee was adjourned.]

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